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CHARLES E.

No. 425

IN THE

Supreme Court of the United States

GROUP NO. 1 OIL CORPORATION, *Petitioner,*

v.

JAMES W. BASS, COLLECTOR OF INTERNAL REVENUE FOR THE UNITED STATES FOR THE FIRST DISTRICT OF TEXAS, *Respondent.*

PETITION OF GROUP NO. 1 OIL CORPORATION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

GROUP NO. 1 OIL CORPORATION,
By HOMER L. BRUCE,
Attorney for Petitioner.

Of Counsel:
BAKER, BOTTS, PARKER & GARWOOD,
Houston, Texas.

McCURDY-YOUNG CO., HOUSTON

No.....

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To the Honorable,
The Supreme Court of the United States:

Now comes Group No. 1 Oil Corporation and petitions for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, to review the decision of said court in this cause, which decision reversed a judgment rendered by the United States District Court for the Western District of Texas, Austin Division, in favor of petitioner against respondent, and represents and shows to the court:

I.

Petitioner is a corporation organized under the laws of the State of Delaware with its principal office at El Paso, El Paso County, Texas, in the Western District

of that State. Respondent is the Collector of Internal Revenue for the United States for the First District of Texas, and resides at Austin, Travis County, Texas, in the Western District of Texas, and is there domiciled.

II.

SUMMARY AND SHORT STATEMENT OF THE MATTERS INVOLVED

(1) Brief Statement of the Question Involved.

This court in a series of cases arising from Oklahoma has held that the holders of oil and gas leases granted by the United States upon Indian lands are agencies and instrumentalities of the United States government, and the State of Oklahoma may not levy any taxes, including an income tax, upon such lessees. Choctaw, Oklahoma & Gulf Railroad Company v. Harrison, 235 U. S. 292; Indian Territory Illuminating Oil Company v. Oklahoma, 240 U. S. 522; Howard v. Gipsy Oil Company, 247 U. S. 503; Large Oil Company v. Howard, 248 U. S. 549 (reversing the decision of the Supreme Court of Oklahoma in Large Oil Company v. Howard, 63 Okla. 143, 163 Pac. 537); Gillespie v. Oklahoma, 257 U. S. 501; and Jaybird Mining Company v. Weir, 271 U. S. 609. In the Gillespie case this court held invalid an income tax levied by Oklahoma upon the net income of such a Federal lessee. This court in The Collector v. Day, 78 U. S. (11 Wall.), 113, 127; United States v. Railroad Company, 84 U. S. (17 Wall.) 322, 327-8; Pollock v. Farmers Loan & Trust Company, 157 U. S. 429, 584; and in Ambrosini v. United States, 187 U. S. 1, 7, and many other cases, has held that instrumentalities of the States are exempt from Federal taxation to the same extent and for the same reasons that similar Federal

instrumentalities are exempt from State taxation. Petitioner is the holder of oil and gas leases granted by the State of Texas on part of that State's public domain, and brought this suit to recover from the respondent Federal income taxes it had paid on income derived by petitioner solely from its operation of its State leases. The United States District Court for the Western District of Texas rendered judgment in petitioner's favor for $736,796.25, and held its income was exempt from the Federal income tax. The Circuit Court of Appeals for the Fifth Circuit reversed the judgment of the District Court, and held petitioner's income was not exempt. This is the first case before this court, so far as we are informed, in which an oil and gas lessee, holding a lease from a State, has asserted its exemption from Federal taxation on the same grounds upon which this court in the cases above cited held that a similar lessee, holding a lease from the United States, was exempt from State taxation.

(2) Statement of the Pleadings.

Petitioner filed its original petition (R. 2) to recover the income taxes it had paid under the Revenue Acts of 1924, 1926 and 1928, to respondent for the periods from July 1, 1924, to March 31, 1928, which taxes had been assessed against petitioner on account of income derived by it from its operation of oil and gas leases granted petitioner by the State of Texas on part of that State's public lands. Petitioner asserted its said income was exempt from these Federal income taxes on the following grounds:

The lands covered by the leases have always been a part of the public domain of the State of Texas, and

its predecessor governments, the Kingdom of Spain, the Republic of Mexico, the Republic of Texas, and finally the State of Texas. The United States, in the compact between the Republic of Texas and the United States under which the Republic of Texas became the State of Texas (as shown in 5 Stats. 797; 9 Stats. 108; Gammel's Laws of Texas, Vol. 2, pp. 1200, 1225 and 1228), expressly guaranteed that the State of Texas should retain its vacant and unappropriated lands, which included the specific tracts covered by petitioner's leases, and dispose of them as said State might direct. The lands involved herein had been set aside by the State for the support of the University of Texas, a University established and maintained by the State of Texas. In order for the State to secure the development of its oil and gas and other minerals and convert them into money for the benefit of the State and its University, the State of Texas granted oil and gas leases upon University lands, reserving a royalty equal to one-eighth of the oil and one-tenth of the gas. Petitioner held two such leases (copies of which are set forth at R. 18 and 28). The income taxes paid to respondent were assessed on income derived by petitioner solely from the sale of oil and gas produced by it from these State leases and from its operation of the leases. Petitioner had other taxable income, but this was more than offset by properly deductible expenses, and none of the taxes paid were assessed because of this outside taxable income. Its claims to exemption from the Federal income taxes may be summarized as follows:

1. The taxes are a burden on the power and right of the State of Texas to develop its own oil and gas

resources, and could be used by the Federal Government to destroy that power and right.

2. The taxes are a burden upon the leases and the petitioner as the owner thereof, chosen by the State as means to develop its mineral resources, and could be used to render them impotent as such means and agencies.

3. The taxes are upon the rights and franchises granted by the State.

4. The leases are exempt from Federal taxation, and petitioner's income therefrom is likewise exempt.

5. The taxes prevent the petitioner from producing the maximum amount of oil and thus reduce the State's returns through its royalties.

6. If these taxes could be levied by the Federal Government on the State's lessees, this would have a sensible influence on the terms the State could require in the leases and the amount of royalties it could reserve.

It alleged the taxes were invalid on each of the foregoing grounds, both under the Constitution of the United States and under the express guarantee of the United States in its compact with the Republic of Texas that the new State of Texas should retain its public lands as its own and dispose of them as it deemed best.

All necessary prerequisites under the revenue laws as to filing claims for refund and their rejection before the suit was filed were alleged, and were admitted by respondent.

The respondent filed a formal answer (R. 29), and an agreed Statement of Facts (R. 31) was filed, which admitted all the allegations of petitioner except those

alleging the legal propositions on which petitioner based its claim to exemption. The effect was to narrow the issues to the one question of whether the petitioner was under the facts alleged exempt from the Federal income taxes.

(3) Trial of the Cause and Result Thereof.

The case was tried on October 19, 1929, before the court on written waiver of a jury. (R. 30.) On February 19, 1930, the court filed its opinion (R. 39), sustaining petitioner's contentions in full, and on February 28, 1930, entered judgment in petitioner's favor for the taxes sued for. (R. 54.)

(4) Proceedings in Circuit Court of Appeals.

Respondent in due course was allowed an appeal from the judgment aforesaid. The cause was heard by the United States Circuit Court of Appeals for the Fifth Circuit, at New Orleans, Louisiana, being Cause No. 5881 on the docket in that court, and on June 18, 1930, said court rendered its opinion (R. 73) and entered its order and judgment (R. 75) reversing the judgment of the District Court on the ground that by Section 27 of the 1917 Leasing Act, which section is as follows:

> "Rights acquired under this Act shall be subject to taxation as is other property,"

under which Act petitioner's leases were granted, the State of Texas granted the United States permission to levy these income taxes on the petitioner, the State's instrumentality. The court so construed this Section 27 notwithstanding that said section was intended to refer solely to taxation by the State and its subdivisions, that it did not refer either expressly or impliedly to

Federal taxation, and notwithstanding that this court in Van Brocklin v. Tennessee, 117 U. S. 151, 175; Owensboro National Bank v. Owensboro, 173 U. S. 664, 668; First National Bank v. Adams, 258 U. S. 362, 364; Jaybird Mining Company v. Weir, 271 U. S. 609, 613; and Shaw v. Gibson-Zahniser Oil Corporation, 276 U. S. 575, 578, 579, has specifically held that neither the United States nor any State may tax the property or the agencies or instrumentalities of the other without its express consent, and if in any instance such consent is granted, only those taxes that fall clearly within the class of taxes embraced therein will be sustained.

Thereafter, in due time, on July 7, 1930, petitioner filed in said United States Circuit Court of Appeals its motion for a rehearing (R. 77), which motion was considered by said court and on August 1, 1930, denied (R. 89); and thereupon the judgment of reversal in said cause became and was a final judgment.

III.

A certified copy of the entire record of said cause, including the proceedings in said Circuit Court of Appeals, is herewith furnished as an exhibit to this petition in compliance with Rule 38 of this honorable court.

IV.

Reasons Relied Upon for Allowance of Writ of Certiorari.

Petitioner is advised and believes, and, accordingly, submits that said judgment of the United States Circuit Court of Appeals in said cause is erroneous, and that this honorable court should require said cause to be

certified to it for its review and determination in conformity with the provisions of Section 240 of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stats. 938.

Petitioner represents, as it submits will become apparent from what follows, that this cause involves questions of law of gravity and importance, involving the construction of the Constitution and laws of the United States and of the said treaty between the United States and the Republic of Texas; that the Circuit Court of Appeals has decided important questions of constitutional and general law in a way probably untenable and in conflict with the weight of authority; that it has decided the Federal questions herein presented in a way probably in conflict with applicable decisions of this court; and that it has so far departed from the accepted and usual course of judicial proceedings as to call for the exercise of this court's power of supervision; in that said Circuit Court of Appeals for the Fifth Circuit, by reversing the judgment and decree of the District Court, committed errors which petitioner now here assigns in this court as follows:

1. The court erred in reversing the judgment and decree in petitioner's favor because all questions of law in this case have been decided in favor of petitioner by this court in Gillespie v. Oklahoma, 257 U. S. 501, and the other cases above referred to arising from Oklahoma, and on the authority of those cases the judgment of the District Court should have been affirmed.

2. The court erred in reversing the judgment and decree in the petitioner's favor because said income taxes are a tax upon and burden, impede, impair, control, and

are in derogation of, the power and the right of the State of Texas to develop and realize on its oil and gas resources in and under its lands for its own benefit, and if the United States Government has the power to levy and collect such taxes, this power could be used by the United States Government to destroy and render valueless said power and right of the State of Texas, in violation of and contrary to the Constitution of the United States and said treaty between the United States and the Republic of Texas.

3. The court erred in reversing the judgment and decree in petitioner's favor because said income taxes are a tax upon and burden, impede, impair, and control petitioner and its said leases, and because petitioner and its leases have been chosen by said State as its agencies and instrumentalities for exercising its power and right to develop and realize upon its oil and gas resources for the benefit of itself, and if the United States Government had the power to levy and collect such taxes, this power could be used by the United States to destroy and render impotent said means and instrumentalities of the State of Texas, in violation of and contrary to the Constitution of the United States and said treaty between the United States and the Republic of Texas.

4. The court erred in reversing the judgment and decree in petitioner's favor because said income taxes are a tax upon and burden, impede, impair, control, and are in derogation of, the rights, privileges, licenses and franchises obtained by petitioner under said leases from the State of Texas, and if the United States Government had the power to levy and collect such taxes, this power could be used by the United States Govern-

ment to destroy and render valueless said rights, privileges, licenses and franchises obtained by petitioner from the State of Texas, in violation of and contrary to the Constitution of the United States and said Treaty between the United States and the Republic of Texas.

5. The court erred in reversing the judgment and decree in petitioner's favor because said rights, privileges, licenses and franchises obtained by petitioner under said leases from the State of Texas and said leases are exempt from taxation by the United States under the Constitution of the United States and said Treaty between the United States Government and the Republic of Texas, and the income derived by the petitioner therefrom is likewise exempt from such taxation.

6. The court erred in reversing the judgment and decree in petitioner's favor because said income taxes burden, impede, impair, control and arrest this taxpayer, as said instrumentality, in its development of the lands of said State for oil and gas and in producing oil and gas therefrom, and prevents the State of Texas from obtaining the greatest return from its royalties on the oil and gas produced from said lands, and if the United States Government had the power to levy and collect such taxes, said power could be used by the United States Government to prevent this taxpayer from developing said lands for oil and gas and from producing oil and gas therefrom, with the result that the State of Texas would be prevented from realizing anything upon the royalties to be paid it under said leases, in violation of and contrary to the Constitution of the

United States and said Treaty between the United States and the Republic of Texas.

7. The court erred in reversing the judgment and decree in petitioner's favor because, if the United States had the power to levy and assess income taxes upon the holders of oil and gas leases granted by the State of Texas upon its public domain, this power would have a sensible influence on the terms of said leases that the State of Texas could demand and require, and the consideration that the State of Texas could require and obtain therefor, and the amount of royalties said State could reserve, and said power could be used to such an extent by the United States Government that the State of Texas would be required to grant said leases on terms more disadvantageous to it and for less consideration and for less royalties reserved, and could be used by the United States to render it impossible for the State of Texas to realize a reasonable amount, if anything at all, from its leases and from its said oil and gas resources, in violation of and contrary to the Constitution of the United States and said Treaty between the United States and the Republic of Texas.

8. The court erred in reversing the judgment and decree in petitioner's favor on the ground that by Section 27 of the 1917 Leasing Act the State of Texas granted to the United States permission to levy these income taxes on the State's lessees because said Section 27 dealt solely with taxation of the leases by the State of Texas and its subdivisions and did not in any manner refer to taxes to be levied by the United States, and the State of Texas will not be held to have consented to taxation of its instrumentalities by the United States unless it has expressly given its consent, and

this question was decided by this court in favor of petitioner in the cases hereinbefore referred to, and on the authority of those cases the said court should not have construed said Section 27 as allowing these taxes to be levied by the United States.

9. The court erred in reversing the judgment and decree in petitioner's favor on the ground that by said said Section 27 the State of Texas permitted the United States to levy these taxes because said Section 27 was repealed by the Texas Legislature on March 10, 1925, by Chapter 71, page 225, 39th Legislature, before any of the taxes involved in this cause were levied or became due.

10. The court erred in reversing the judgment and decree in petitioner's favor in relying to any extent on the decision of the Supreme Court of Texas in Theisen v. Robison, 117 Tex. 489, 8 S. W. (2nd) 646, that these leases constituted sales of the minerals, because the sole question before the Supreme Court of Texas in said case was whether these leases violated the provisions of Section 12, Article 7, of the State Constitution that lands set apart for the University of Texas should be sold; and it held merely that, since under the laws of Texas title to the oil and gas in place passed to the lessee on the execution of a lease, subject to reversion to the landowner on forfeiture of the lease, oil and gas leases in Texas in thus transferring title to the oil and gas in place were sales within the meaning of the Texas Constitution; and the levy of these income taxes is as much in derogation of the State's power and right to develop its oil and gas through lessees as its instrumentalities, free from interference from the United States, as they would be if under the

laws of Texas title to the minerals in place remained in the lessor; and to sustain these income taxes on the ground that these leases constituted sales is to do so by the use of a delusive name.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari may issue out of and under the seal of this court directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding said court to certify and send to this court on a day certain, to be therein designated, a full and complete Transcript of the Record and all of the proceedings in said Circuit Court of Appeals in said cause, entitled "James W. Bass, Collector of Internal Revenue for the United States for the First District of Texas, Appellant, v. Group No. 1 Oil Corporation, Appellee," No. 5881 on its docket, to the end that said cause may be reviewed and determined by this court as provided by Section 240 of the Judicial Code, as amended, and that your petitioner may have such other or further relief or remedy in the premises as this court may deem appropriate and in conformity with said provision of the Judicial Code, and that said judgment of the Circuit Court of Appeals be reversed by this honorable court and the judgment of the District Court be affirmed, and such relief granted as is appropriate to the cause.

GROUP NO. 1 OIL CORPORATION,
By HOMER L. BRUCE,
Attorney for Petitioner.

Of Counsel:
BAKER, BOTTS, PARKER & GARWOOD,
Houston, Texas.

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BRIEF OF GROUP NO. 1 OIL CORPORATION IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

— BY —

HOMER L. BRUCE,
Solicitor for Petitioner.

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BAKER, BOTTS, PARKER & GARWOOD,
Houston, Texas.

McCURDY-YOUNG CO., HOUSTON

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BRIEF OF GROUP NO. 1 OIL CORPORATION IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

Opinions of the Courts Below.

The opinion of the District Court in this cause is reported:

Group No. One Oil Corporation v. Bass, Collector of Internal Revenue, 38 Fed. (2d) 680. (R. 39.)

The opinion of the Circuit Court of Appeals for the Fifth Circuit in the cause has not yet been officially deported. (R. 73.)

II.

Jurisdiction.

Jurisdiction of this court is invoked under Section 240 of the Judicial Code, as amended by the Act of Feb-

ruary 13, 1925, 43 Stats. 938. The judgment sought to be reviewed is that of the Circuit Court of Appeals for the Fifth Circuit rendered June 18, 1930 (R. 75), which became a final judgment by the overruling of petitioner's motion for a rehearing (R. 77) on August 1, 1930. (R. 89.) The judgment of the Circuit Court of Appeals reversed the judgment rendered on February 28, 1930, by the District Court for the Western District of Texas, Austin Division (R. 54), in favor of petitioner, against the respondent, for $736,796.25 of income taxes paid to respondent by petitioner.

The petitioner brought this suit to recover income taxes paid by it to respondent on income derived by petitioner from the sale of oil and gas produced by it under leases from the State of Texas upon part of that State's public domain, and from its operations on said leases. Petitioner's claim was that, under both the Constitution of the United States and the treaty between the United States and the Republic of Texas under which the latter became the State of Texas, such income was exempt from Federal income taxes because petitioner and its leases were the agencies and instrumentalities selected by the State of Texas as appropriate means whereby the State could secure the development of its oil and gas under its public domain to the best advantage of the State and convert its interest in these minerals into money, and such taxes hinder, and are in derogation of, the State's power and right to develop its own mineral resources free from any interference on the part of the United States. (Original Petition, R. 2.)

This court, in Choctaw, Oklahoma & Gulf Railroad Company v. Harrison, 235 U. S. 292; Indian Territory Illuminating Oil Company v. Oklahoma, 240 U. S. 522;

Howard v. Gipsy Oil Company, 247 U. S. 503; Large Oil Company v. Howard, 248 U. S. 549 (reversing the decision of the Supreme Court of Oklahoma in Large Oil Company v. Howard, 63 Okla. 143, 163 Pac. 537); Gillespie v. Oklahoma, 257 U. S. 501; and Jaybird Mining Company v. Weir, 271 U. S. 609, all cases arising from Oklahoma, has held that the holders of oil and gas leases granted by the United States upon Indian lands are agencies and instrumentalities of the United States, and as such are exempt from taxation by Oklahoma. This court has likewise held in The Collector v. Day, 78 U. S. (11 Wall.) 113, 127; United States v. Railroad Company, 84 U. S. (17 Wall.) 322, 327, 328; Pollock v. Farmers Loan & Trust Company, 157 U. S. 429, 584; and in Ambrosini v. United States, 187 U. S. 1, 7, and many other cases, that instrumentalities of the States are exempt from Federal taxation to the same extent and for the same reasons that Federal instrumentalities are exempt from State taxation.

The District Court, in its opinion (R. 39), sustained petitioner's claim, and on February 28, 1930, rendered judgment against respondent for all the taxes sued for. (R. 54.) The Circuit Court of Appeals, on June 18, 1930, reversed the judgment of the District Court, and held petitioner's income was taxable. (R. 73, 75.)

Jurisdiction of this court is invoked under Section 240 of the Judicial Code, as amended, on the following grounds:

(*a*) That the cause involves grave questions of vital importance to the public, involving the construction of the Constitution and laws of the United States and of the said treaty between the United States and the Republic of Texas.

(*b*) That the Circuit Court of Appeals has decided important questions of constitutional and general law in a way probably untenable and in conflict with the weight of authority.

(*c*) That the Circuit Court of Appeals has decided the Federal questions herein presented in a way probably in conflict with applicable decisions of this court.

(*d*) That this is the first case before this court in which the holder of an oil and gas lease from a State is claiming the exemption from Federal taxation that this court held in the Oklahoma cases applied to lessees from the United States as far as State taxation was concerned.

(*e*) That the Circuit Court of Appeals has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this court's power of supervision.

III.

Statement of the Case.

A statement of the case has been given under heading II in the petition for a writ of certiorari, and in the interest of brevity is not repeated at this point.

IV.

Specification of Errors.

The assigned errors intended to be urged are fully set forth in the petition for writ of certiorari, and may be summarized as follows:

1. The Circuit Court of Appeals erred in reversing the judgment of the District Court because on the authority of the decision in Gillespie v. Oklahoma, 257 U.

S. 501, and the other decisions of this court referred to, petitioner is exempt from the Federal income tax as an instrumentality of the State of Texas.

2. The said court erred in reversing the judgment of the District Court because the taxes involved are a burden upon, impair, and are in derogation of, said State's right, under the Constitution of the United States and the treaty between the United States and the Republic of Texas, to develop its own mineral resources free from interference by the United States, and are an unauthorized burden upon petitioner and its leases, the agencies chosen by the State for the purpose of exercising this right.

3. The said court erred in holding that by Section 27 of the 1917 leasing act the State of Texas granted its permission to the United States to levy these taxes upon its instrumentality, the petitioner, because said section dealt solely with taxation by said State and its subdivisions, and not with taxes levied by the United States.

4. The said court erred in holding the collection of said taxes was allowed under said Section 27 because said section was repealed on March 10, 1925, before any of said taxes were levied or became due.

5. The court erred in holding, if in fact it did hold, that under the decision of the Supreme Court of Texas in Theisen v. Robison, 117 Tex. 489, petitioner was not an instrumentality of the State, but was merely a purchaser of the minerals, because neither petitioner's leases nor said decision of the Supreme Court of Texas sustain such a holding.

Petitioner now seeks a writ of certiorari to said Circuit Court of Appeals to the end that said cause may be

reviewed by this court, the petition for which is filed herewith. In support thereof it respectfully submits the following brief reference to the principles of law, to some of the decisions and to the statutes which govern the questions.

Preface to Argument.

The District Court, in its opinion, held on the principal authority of Gillespie v. Oklahoma, 257 U. S. 501, and the other Oklahoma cases, that petitioner, as an agency of the State, was exempt from the Federal income tax. The Circuit Court of Appeals based its reversal of the District Court's judgment on the one ground that the State, by Section 27 of the 1917 leasing act, reading "Rights acquired under this Act shall be subject to taxation as is other property," withdrew from its lessees all rights of exemption from Federal taxation to which they were otherwise entitled. When the fundamental nature of the principles involved in this cause are fully appreciated, we submit it will be apparent that the State of Texas has not by this simple provision waived all the benefits that would otherwise accrue to it. For that reason we beg leave to refer to these principles before dealing specifically with this Section 27. Our discussion of it and the construction placed on it by the Circuit Court of Appeals will be found under Points D and E of this brief.

ARGUMENT

Point A.

The leases under which petitioner produced the oil and gas from the public domain of the State of Texas

covered thereby, and petitioner as the owner thereof, are the means, agencies and instrumentalities chosen by the State of Texas for developing the State's oil and gas, and the United States had no power or authority to levy the income taxes on the income of petitioner from its leases.

The facts and legal principles involved are well set forth in the opinion of the District Court. (R. 39.) We will briefly review them.

Copies of the leases, which are substantially identical in form, are set forth in the record. (R. 18, 23.) The lands involved have always been part of the public domain of the State of Texas and its predecessor governments, the Kingdom of Spain, the Republic of Mexico, and the Republic of Texas. The Republic of Texas became the State of Texas after lengthy negotiations between the two independent nations, the United States and the Republic of Texas, and did so under certain specific guarantees set forth in the resulting compact between the two republics. The resolutions of the two governments may be found in 5 Stats. 797, 9 Stats. 108, and Gammel's Laws of Texas, Vol. 2, pp. 1200, 1225 and 1228, and copies are annexed to this brief at page i of the Appendix. Part of this compact is as follows:

> "2. And be it further resolved, that the foregoing consent of Congress is given upon the following conditions, and with the following guarntees, to wit:
>
> "Second. **Said State * * * shall also retain all the vacant and unappropriated lands lying within its limits,** to be applied to the payment of the debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debts and liabilities, **to be disposed of as said State**

may direct; but in no event are said debts and liabilities to become a charge upon the Government of the United States."

While still an independent nation, the Republic of Texas on January 26, 1839 (Laws of 1839, p. 134), directed the President to set aside 50 leagues of land for two universities, and by the Act of February 11, 1858 (Laws of 1858, p. 148), established "an Institution of Learning, to be styled 'The University of Texas'," and set aside additional land for it. The State Constitution of 1876, Article VII, Sections 10 to 15 (Appendix p. *ix*), provided for "The University of Texas" to be established as a University of the first class, and Section 15 set aside 1,000,000 acres for its endowment and support. By the Act of March 30, 1881 (Laws of 1881, p. 79), the present University was finally created. It is strictly a State maintained and controlled school. Articles 2584 to 2606 and 2907, Revised Statutes of Texas of 1925, deal with its management, but their details are immaterial. Petitioner's leases are on part of these University lands.

The State, not desiring to engage in the highly speculative oil business, has elected to have its oil and gas produced in the usually accepted manner of granting leases and reserving a royalty of part of the oil and gas produced. The State has continuously been modifying its leasing laws to obtain the best results, the principal ones being the Act of April 9, 1913, Chap. 173, p. 409, 33rd Legislature; March 16, 1917, Chap. 83, p. 158, 35th Legislature (Appendix p. *xii*); March 10, 1925, Chap. 71, p. 225, 39th Legislature (Appendix p. *xxvi*); January 11, 1929, Chap. 2, p. 6, 41st Legislature (Appendix p. *xxxvi*); March 29, 1929, Chap. 282, p. 616, 41st Legis-

lature (Appendix p. *xxxix*). These acts have been amended many times in immaterial particulars.

Petitioner's leases were granted under the 1917 Act, which provided substantially as follows:

Permits to explore for oil and gas were first issued, and on the discovery of oil or gas, leases were granted by the Commissioner of the General Land Office for ten years with an option to renew as long as oil or gas were produced. In addition to the initial cash payment of two dollars per acre, the lessee was required to pay a royalty equal to one-eighth of the value of the gross production of oil and one-tenth of gas. The Commissioner was authorized to provide such further terms and regulations as he deemed best for the protection of the State. The leases contained the following provisions: (1) the lessee was required to use reasonable diligence to develop the properties and produce the oil and gas; (2) offset wells must be drilled to prevent drainage by wells on adjoining property; (3) if the lessee failed to perform the conditions of the lease, or pay the royalties, or comply with any regulations of the Commissioner, the leases were subject to forfeiture.

The sole purpose of the State in granting these leases was to realize upon its interest in the minerals through its royalties. This is clear from the Leasing Acts themselves, and the frequent legislation on the subject. Petitioner alleged such to be its purpose (R. 9, par. VIII), and it was admitted in the agreed Statement of Facts. (R. 35, par. VIII.)

This court has held that similar leases and lessees from the Federal government covering Indian lands in Oklahoma are instrumentalities of the United States and exempt from taxation by the State of Oklahoma, be-

cause such taxes are a hindrance upon the right and power of the United States to develop the minerals for the best interest of the Indians. These cases are Choctaw, Oklahoma & Gulf Railroad Company v. Harrison, 235 U. S. 292 (a tax on the gross production of a mine); Indian Territory Illuminating Oil Company v. Oklahoma, 240 U. S. 522 (a tax upon the leases); Howard v. Gipsy Oil Company, 247 U. S. 503; Large Oil Company v. Howard, 248 U. S. 549, reversing the Supreme Court of Oklahoma decision in 63 Okla. 143 (a tax on the gross production after deduction of the royalty); Gillespie v. Oklahoma, 257 U. S. 501 (an income tax upon the net income of the lessee); Jaybird Mining Companay v. Weir, 271 U. S. 609 (an ad valorem tax on the minerals mined).

The applicable rules are succinctly stated by Justice Holmes in the Gillespie case as follows:

> "The criterion of interference by the States with interstate commerce is one of degree. It is well understood that a certain amount of reaction upon and interference with such commerce cannot be avoided if the States are to exist and make laws. New York, New Haven & Hartford R. R. Co. v. New York, 165 U. S. 628. Diamond Glue Co. v. United States Glue Co., 187 U. S. 611, 616. The rule as to instrumentalities of the United States on the other hand is absolute in form and at least stricter in substance. Williams v. Talladega, 226 U. S. 404, 416, 417, 419. Johnson v. Maryland, 254 U. S. 51, 55. 'A tax upon the leases is a tax upon the power to make them, and could be used to destroy the power to make them.' 240 U. S. 530. The step from this to the invalidity of the tax upon income from the leases is not long.
>
> "In cases where the principal is absolutely immune from interference an inquiry is allowed into the sources from which net income is derived and

if a part of it comes from such a source the tax is *pro tanto* void; Pollock v. Farmers' Loan & Trust Co., 157 U. S. 429; 158 U. S. 601; rule lately illustrated by Evans v. Gore, 253 U. S. 245; and applied in a case somewhat like the present by the Supreme Court of Hawaii, Oahu R'y & Land Co. v. Pratt, 14 Hawaii 126. Whether this property could be taxed in any other form or not, it cannot be reached as profits or income from leases such as those before us."

Further quotations from these opinions will not be made. They decisively settle the fundamental principles involved in this cause. They establish the two propositions: first, that an oil and gas lessee holding under one government falls within that class of instrumentalities that may not be taxed by the other government; and, second, that an income tax on the lessee's income is one of the forbidden taxes.

Petitioner, as a lessee from the State of Texas, is to the same extent and for like reasons exempt from the Federal income tax. In The Collector v. Day, 78 U. S. (11 Wall.) 113, 127, this court said:

"And if the means and instrumentalities employed by that government to carry into operation the powers granted to it are, necessarily, and, for the sake of self-preservation, exempt from taxation by the States, why are not those of the State depending upon their reserved powers, for like reasons, exempt equally from Federal taxation? Their unimpaired existence in the one case is as essential as in the other. * * * In both cases the exemption rests upon necessary implication, and is upheld by the great law of self-preservation; and any government, whose means employed in conducting its operations, if subject to the control of another and distinct government, can exist only at the mercy of that government. Of what avail are these

means if another power may tax them at discretion?"

In Pollock v. Farmers Loan & Trust Company, 157 U. S. 429, 584, it is stated:

> "As the States cannot tax the powers, the operations, or the property of the United States, nor the means which they employ to carry their powers into execution, so it has been held that the United States have no power under the Constitution to tax either the instrumentalities or the property of a State."

See also United States v. Railroad Company, 84 U. S. (17 Wall.) 322, 327; Ambrosini v. United States, 187 U. S. 1, 7.

The decision in the Gillespie case as to the Federal lessee applies with equal force to the petitioner in this cause. Under that case this State lessee is an instrumentality of the State, and as such the United States may not tax its income from its leases.

These Oklahoma cases, and particularly Gillespie v. Oklahoma, are now among the leading authorities on the question of exemption of governmental instrumentalities. Long v. Rockwood, 277 U. S. 142, 148; Panhandle Oil Company v. Knox, 277 U. S. 218, 222; The Macallen Company v. Massachusetts, 279 U. S. 620, 627; Northwestern Mutual Life Insurance Company v. Wisconsin, 275 U. S. 136, 140, in which it was said:

> "Certainly since Gillespie v. Oklahoma, 257 U. S. 501, 505, it has been the settled doctrine here that where the principal is absolutely immune, no valid tax can be laid upon income arising therefrom."

When the underlying reasons and the long line of decisions of this court, beginning with M'Culloch v. Mary-

land, 4 Wheat. 316, are considered, it inevitably follows that one government may not tax the other government's oil and gas lessees. We will not review in detail the numerous decisions of this court, but desire to call attention merely to a few typical extracts from its opinions:

> "There is no express provision for the case, but the claim has been sustained on a principle which so entirely pervades the Constitution, is so intermixed with the materials which compose it, so interwoven with its web, so blended with its texture, as to be incapable of being separated from it without rending it into shreds. * * *
>
> "These are, 1st, that a power to create implies a power to preserve. 2nd, that a power to destroy, if wielded by a different hand, is hostile to, and incompatible with, those powers to create and to preserve. 3rd, that where the repugnancy exists, that authority which is supreme must control, not yield to that over which it is supreme. * * *
>
> "The court has bestowed on this subject its most deliberate consideration. The result is a conviction that the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government." M'Culloch v. Maryland, 4 Wheaton 316.

> "Congress has power 'to borrow money on the credit of the United States.' The stock it issues is the evidence of a debt created by the exercise of this power. The tax in question is a tax upon the contract subsisting between the government and the individual. It bears directly on that contract, while subsisting and in full force. The power operates upon the contract the instant it is framed, and must imply a right to affect that contract. * * *
>
> "The right to tax the contract to any extent, when made, must operate upon the power to bor-

row before it is exercised, and have a sensible influence on the contract. The extent of this influence depends on the will of a distinct government. To any extent, however inconsiderable, it is a burthen on the operations of the government. It may be carried to an extent which shall arrest them entirely." Weston v. City Council of Charleston, 27 U. S. (2 Peters) 449, 465, 466, 468; Pollock v. Farmers Loan & Trust Company, 157 U. S. 429, 586; The Macallen Company v. Massachusetts, 279 U. S. 620, 624.

"Is not compensation the means by which his services are produced and retained? It is true it becomes his when he has earned it. If it can be taxed by a State as compensation, will not Congress have to graduate its amount, with reference to its reduction by the tax? Could Congress use an uncontrolled discretion in fixing the amount of compensation, as it would do without the interference of such a tax?" Dobbins v. Commissioners of Erie County, 41 U. S. (16 Peters) 435, 448.

"And it must be always remembered, if the right to impose a tax at all exists on the part of the other government, 'it is a right which in its nature acknowledges no limits.' And the principle is equally true in respect to every other power or function of a government subject to the control of another." Bank of Commerce v. New York City, 67 U. S. (2 Black) 620, 634.

"This carries with it an exemption of those agencies and instruments from the taxing power of the Federal government. If they may be taxed lightly, they may be taxed heavily; if justly, oppressively. Their operation may be impeded and may be destroyed, if any interference is permitted. Hence, the beginning of such taxation is not allowed on the one side, is not claimed on the other." United States v. Railroad Company, 84 U. S. (17 Wall.) 322, 327, 328.

"Applying this language to these municipal securities, it is obvious that the taxation on the interest therefrom would operate on the power to borrow before it is exercised, and would have a sensible influence on the contract, and that the tax in question is a tax on the power of the States and their instrumentalities to borrow money, and consequently repugnant to the Constitution." Pollock v. Farmers Loan & Trust Company, 157 U. S. 429, 586.

"And to tax the bonds as property in the hands of the holders is, in the last analysis, to impose a tax upon the right of the municipality to issue them." Farmers & Mechanics Savings Bank v. Minnesota, 232 U. S. 516, 526.

"With regard to taxation, no matter how reasonable, or how universal and undiscriminating, the State's inability to interfere has been regarded as established since M'Culloch v. Maryland, 4 Wheat. 316. The decision in that case was not put upon any consideration of degree but upon the entire absence of power on the part of the States to touch, in that way at least, the instrumentalities of the United States; 4 Wheat. 429, 430; and that is the law today. Farmers & Mechanics Savings Bank v. Minnesota, 232 U. S. 516, 525, 526." Johnson v. Maryland, 254 U. S. 51, 55.

"The principle set forth a century ago in Weston v. Charleston, 2 Pet. 449, 468 (7 L. Ed. 481), has never since been departed from by this court:

"'The right to tax the contract to any extent, when made, must operate upon the power to borrow, before it is exercised, and have a sensible influence on the contract. The extent of this influence depends on the will of a distinct government; to any extent, however inconsiderable, it is a burden on the operations of government. It may be carried to an extent which shall arrest them entirely.' Home Savings Bank v. Des Moines, 205

U. S. 503, 513; 27 S. Ct. 571, 51 L. Ed. 901. • • •

"Not only may the power to tax be exercised oppressively, but for one government—State or national—to lay a tax upon the instrumentalities or securities of the other is derogatory to the latter's dignity, subversive of its powers, and repugnant to its paramount authority. See California v. Central P. R. Co., 127 U. S. 1, 41; 8 S. Ct. 1073 (32 L. Ed. 150)." The Macallen Company v. Massachusetts, 279 U. S. 620.

The foregoing quotations apply themselves to the present cause without the need of assisting comment on our part. The taxes are stricken down because they are an impediment upon the power of the State of Texas to obtain the greatest return from the minerals under its public domain, in which activity it is beyond any control by the United States. The levy of these taxes would imply the right by the United States to affect the terms of the leases and would have a sensible influence on the royalties reserved by the State. The net income of the lessee is the compensation received by it from the State for its services in producing the State's royalty portion of the oil. If the United States may reduce this compensation through the income tax, the State would have to increase it by reducing its reserved royalties, and could not use its uncontrolled discretion in fixing their amount. There is no question of degree of taxation, whether it is burdensome or not, or whether it is universal and undiscriminating. This burden on the State's agency is a continuous one. The State's returns through its royalties depend upon the amount of oil produced. Taxes paid to the Federal government reduce the funds available to the lessee for further drilling, exploration and producing operations. It is

well known that reductions in the price of oil curtail drilling and the bringing in of new wells, and in the same manner increases in the income tax rate reduce the operations of lessees. The levy of these taxes amounts to the United State's demanding what is known as a working interest in the State of Texas' oil properties. It is even more stringent than an ordinary working interest of a third party, which is fixed and certain. The working interest of the United States for any year may not be known during the entire year. The tax rate may not be fixed until the next year, as was the case of the Revenue Act of 1926, which was retroactive to January 1, 1925. The United States has no power or right to demand that it be carried for this indefinite and fluctuating working interest in the oil lands of the State of Texas, which working interest, if permitted, is fixed by the United States in its uncontrolled discretion and without consultation with the State of Texas.

It is clear therefore that these taxes are an unauthorized burden upon the State of Texas.

Point B.

The State of Texas may not be hindered or impeded in any manner by the United States in developing its own oil and gas resources on its public domain.

The lands involved in this cause have always been the public domain of the State and its predecessor governments. It became a State under the express guarantee that it should "retain all the vacant and unappropriated lands lying within its limits," and, after using them to pay its debts, the lands remaining were "to be disposed of as said State may direct."

Not only under the Constitution of the United States but also under the above express guarantee, the State of Texas has the sovereign right to retain, own, cultivate, and utilize these lands and enjoy all the rights and privileges of ownership in them and ultimately to dispose of them. The States may levy no taxes upon property of the United States (Van Brocklin v. Tennessee, 117 U. S. 151; Wisconsin Central Railroad Co. v. Price County, 133 U. S. 496; Lee v. Osceola & Little River Road Improvement District No. 1, 268 U. S. 643; Irvin v. Wright, 258 U. S. 219, 228), and for the same reasons the United States may not tax the lands of the State of Texas. As the United States may not tax the State's interest as a whole in these lands, it may tax no part thereof or impede the State in enjoying any of the separate rights making up its entire ownership. One of these individual rights is that of developing its minerals through the usual method of leases. The income taxes infringe this right.

This is not a case of the State's going into a private line of business and drying up sources of Federal taxation, as was held in South Carolina v. United States, 199 U. S. 437. In that case the court held that South Carolina's saloon keepers were not exempt from the Federal excise tax because to hold otherwise would allow a State, mingling the thought of profit with the necessity of regulation, to take over all lines of business and thus remove all sources of Federal revenue. The State of Texas has not bought these lands with the view of going into the oil business. It is merely seeking to realize on the minerals that it and its predecessors have always owned as public property. No pre-existing source of Federal revenue is being affected,

as in the South Carolina case. The United States may levy no taxes on these lands nor impede the State of Texas in whatever use it makes of them. No one may drill them until the State grants a lease, and therefore there can be no income, whether subject to Federal taxes or not, until the State acts.

The respondent may contend the lands now belong to the University of Texas and not the State. The University is a mere branch of the State government, and property set aside for its benefit is still the State's property, and the State does not hold it even as a trustee. York v. Alley, 25 S. W. (2nd) 193, (Texas Court of Civil Appeals); Smisson v. State, 71 Tex. 222, 231, 9 S. W. 112.

It is immaterial for what purpose the State uses the revenue from its oil lands. It has the right to produce its oil free from Federal control or hindrance, and its use of such revenue occurs after the point where these taxes would attach has been passed.

However, its use of the revenue for the University of Texas for the education of its youth is a public one. Cochran v. Louisiana State Board of Education, 281 U. S. 370; Phillips v. Virginia University, 97 Va. 472, 34 S. E. 66; Hjorth Royalty Co. v. Trustees of University of Wyoming, 30 Wyo. 309, 222 Pac. 9. Public schools and universities have been maintained and operated from the earliest colonial times. They were conducted by the colonies. Nelson's Encyclopedia, Vol. 10, p. 91; The Americana, Vol. 27, History of University of Columbia, Vol. 29, p. 337; Ellwood P. Cubberly, "An Introduction to the Study of Education," pages 1-4, 62-3, 357-8. They were authorized by the early State constitutions and colonial laws. (The page

references are to The Federal and State Constitutions, Colonial Charters and other Organic Laws of the United States, compiled under an order of the United States Senate by Ben. Perley Moore, 1878.) Constitutions of Georgia, 1777, Art. LIV, p. 383; Massachusetts, 1780, Art. III, p. 957, Chap. V, p. 970; New Hampshire, 1784, p. 1291; North Carolina, 1776, Art. XLI, p. 1414; Vermont, 1777, Sec. XL, p. 1865; 1786, Sec. XXXVIII, p. 1874; 1793, Sec. 41, p. 1882; Pennsylvania Frames of Government, 1683, Sec. XII, p. 1521; 1696, p. 1535; Constitutions of 1776, Sec. 44, p. 1547; 1790, Art. VII, p. 1553; The Northwest Territorial Government Act of July 13, 1787, Art. III, p. 431. In 1806 (2 Stats. 381) the Federal government required Tennessee to set aside large tracts for two colleges and for academies in each county. In enabling Acts admitting States into the Union the Federal government has consistently set aside lands for the exclusive use of public schools, seminaries and universities. Ohio, 1802, 2 Stats. 173; Indiana, 1816, 3 Stats. 289; Illinois, 1818, 3 Stats. 428; Alabama, 1819, 3 Stats. 489; Missouri, 1820, 3 Stats. 545; Arkansas, 1836, 5 Stats. 58; Iowa, 1845, 5 Stats. 789; Wisconsin, 1846, 9 Stats. 56; Minnesota, 1857, 11 Stats. 166; Oregon, 1859, 11 Stats. 383; Nevada, 1864, 13 Stats. 30; Nebraska, 1864, 13 Stats. 47; Colorado, 1875, 18 Stats. 474; and many others. Public education is the rule, and private schools are the exception. 24 Ruling Case Law 558. Respondent's contentions to the contrary were overruled by both the District Court and the Circuit Court of Appeals.

Point C.

The leases held by petitioner from the State of Texas,

and the petitioner as the owner thereof are agencies and instrumentalities of the State of Texas.

There is no essential difference between petitioner's leases and those involved in Gillespie v. Oklahoma and the other cases arising from Oklahoma. The end sought by the United States and Texas in each instance is the same. Just as this court said in Jaybird Mining Company v. Weir, 271 U. S. 609:

> "In this case, the lease was made to secure the development of the lands and obtain for the benefit of the restricted Indian owners a percentage of the gross proceeds of the ores to be mined,"

so in this case the leases were made to secure the development of the lands and obtain for the benefit of the State of Texas a percentage of the gross proceeds of the oil and gas produced.

Inasmuch as respondent has relied in the lower courts, and may rely in this court, on the decision of the Supreme Court of Texas in Theisen v. Robison, 117 Tex. 489, 8 S. W. (2nd) 646, we will review it. The opinions of both the lower courts show they considered the Theisen case, but did not agree with respondent's contentions with respect to it. A brief review of that case and its surrounding circumstances will demonstrate that it has no material bearing upon this case. Respondent's contention has been that under the Theisen case the State did not lease the lands to petitioner, but petitioner bought the oil and gas it produced and its income was derived merely from its resale, and, therefore, it is the same as if petitioner bought a tract of land from the State for cash and later resold it at a profit. In such case respondent contends petitioner would be subject

to the Federal income tax on its profit, and consequently must pay a tax on its income from these leases.

The State as early as 1913 (Act of April 9, 1913, Ch. 173, p. 409, 33rd Legislature), provided for leasing all public lands for the production of all kinds of minerals on a royalty basis. This was superseded by the 1917 Act heretofore referred to. Petitioner was the first to discover oil on University lands, and thereafter the potential returns to the State from the oil and gas on University lands so far overshadowed the prospective returns from other State lands and from other minerals that special legislation was passed dealing solely with oil and gas on University lands. As to them the Leasing Act of March 10, 1925, Ch. 71, p. 225, 39th Legislature, superseded the 1917 Act, which in turn was suspended by the Act of March 31, 1927, Ch. 249, p. 368, 40th Legislature, pending the determination of the Theisen case, and was repealed by the Act of January 11, 1929, Ch. 2, p. 6, 41st Legislature, and replaced by that of March 29, 1929, Ch. 282, p. 616, 41st Legislature. Copies of the 1917, 1925, 1927 and 1929 Acts are for convenience set out at pages *xii, xxvi, xxxiv, xxxvi* and *xxxix* of the Appendix, but the details of their provisions are not material.

In 1926 Theisen sued to compel Robison, the Land Commissioner, to issue him a permit to prospect for oil and gas under the 1917 Act. Robison refused on the ground the 1925 Act had repealed the 1917 Act as to oil and gas on University lands. The Board of Regents of the University intervened and contended that both Acts were invalid because of Article VII, Sec. 12, of the Constitution. The Supreme Court said:

"The principal question in the case is whether the

Acts of 1917 and 1925 violate Section 12 of Article 7 of the Constitution, which reads as follows:

"'The land herein set apart to the University shall be **sold** under such regulations, at such times, and on such terms as may be provided by law'."

The grounds of the attack were summarized by the court as follows:

"The two acts are mainly assailed on the ground that they provide for a permit or lease conferring on the permittee or lessee no greater right than a mere license, exercisable at the permittee's or licensee's option, to prospect for oil or gas, when the Constitution mandatorily requires the legislature to dispose of the University lands by **sale** only and forbids the grant of a mere optional license."

The legal grounds upon which the Supreme Court sustained the Leasing Acts may be summarized as follows: (1) The word "sold" as used in the Constitution should be given the meaning it had at common law. (2) For centuries the uniform method by which landowners converted their minerals into money has been the execution of leases with a royalty reserved. (3) The court in Benavides v. Hunt, 79 Tex. 383, 15 S. W. 396, Texas Company v. Daugherty, 107 Tex. 236, 176 S. W. 717, and Stephens County v. Mid-Kansas Oil & Gas Company, 113 Tex. 160, 254 S. W. 290, had held that in Texas an ordinary oil and gas lease operated to convey the title to the minerals in place immediately to the lessee, subject to reversion to the lessor on forfeiture of the lease, whereas some courts hold that title to the minerals remains in the lessor and does not pass to the lessee except as they are produced and reduced to actual possession. (4) As title to the minerals in place thus

passed to the lessee immediately, such a lease was a present conveyance of an interest in land, and, being such a conveyance, constituted a sale within the common law meaning of that term. (5) The leases authorized by the Leasing Acts had the same effect, the Supreme Court saying:

> "It is unthinkable to treat the ordinary lease as conveying minerals in place and to refuse to give that effect to the grants authorized by these Acts."

(6) These leases therefore constituted sales within the meaning of Section 12 of the Constitution.

Whether these leases are technically sales or not is wholly immaterial to the present case. The question involved is whether the Federal income taxes on petitioner's income interfere with the right and power of the State of Texas to convert its minerals, which are of no usable value while below the surface, into money. They are as great an interference with the exercise of this power by the State as the Oklahoma income taxes were with the efforts of the United States to develop the Indians' land for the Indians.

Respondent has in the lower courts argued that, under the latter part of the opinion in the Theisen case which stated that the State had sold all the oil and when it was thus appropriated by the lessee it formed no part of the University's permanent fund, these lessees were in no sense lessees but merely purchased all the oil and gas and resold it at a profit like any other public land bought from a State. The same is true in reference to any oil and gas lease. Although such leases usually provide the lessor's royalty shall be one-eighth of the actual oil produced, if the lessor demands the oil, or of the proceeds, the customary practice is

for the entire eight eighths to be sold and one-eighth of the proceeds remitted to the lessor. When the oil and gas are thus appropriated under the ordinary lease, the lessor has no further right, title or interest therein, but merely receives the proceeds of his royalty interest, just as the State here receives the proceeds of one-eighth of the oil and one-tenth of the gas.

The State may have parted with the legal title to the minerals in place, but if the terms of the leases are not carried out, they are subject to forfeiture in which event the title reverts to the State.

The true distinction between this case and that of an ordinary purchase and resale of State property has been pointed out in Weston v. City Council of Charleston, 27 U. S. (2 Peters) 449, 468:

> **"When lands are sold, no connexion remains between the purchaser and the government.** The lands purchased become a part of the mass of property in the country with no implied exemption from common burthens. All lands are derived from the general or particular government, and all lands are subject to taxation."

In Van Brocklin v. Tennessee, 117 U. S. 151, at 169:

> "And the reason why, after lands have been duly entered at the land office, and everything has been done to entitle the party to a patent, they have by long usage, confirmed by the decisions of this court, been considered before the patent is actually taken out, as subject to State taxation, is that the United States have nothing but the naked legal title, and the lands are in truth no longer public property, but have become private property."

In this case the State remains vitally connected with these leases and their production from day to day

through its royalties which depend solely on continued production. Instead of no connection remaining, the State's connection really in fact only commences as only upon the execution of these leases does it begin to realize upon its mineral wealth.

These leases are not sales in the meaning contended for by respondent. The Leasing Acts do not refer to the State as "seller" or "vendor" or to the lessee as "purchaser" or "vendee." Both in the Acts and in the opinion in the Theisen case they are continuously termed "lessor" and "lessee," and the leases are called "leases" and not "deeds" or "conveyances." The legislature had in mind and intended to create the usual relation existing between the ordinary oil and gas lessor and lessee.

The purpose of the State was not the same as in the usual case of sales of public land to homesteaders. In such cases it has no future interest in the lands sold and derives no further income therefrom. In these leases its primary end is benefit to itself through its reserved royalties. In the first Leasing Act of April 9, 1913 (33 Leg., Ch. 173, p. 409), it stated its purpose in section 1:

> "It is declared to be the policy of the State to open all such lands to mineral prospecting and development on a system providing for the payment into the State Treasury to the credit of the permanent free school, University, Asylum and other funds, of certain rents and royalties upon the gross output of any minerals or mineral product thereon."

This is evidenced by the emergency clause of the 1917 Act:

> "The fact that portions of the mineral statute are

> so incongruous and difficult of interpretation as to be almost inoperative and the fact that **a law clear in its terms and ample to secure the development of the State's mineral wealth is badly needed** * * * creates an emergency," etc.

It is further evidenced by the progress of legislation on the subject. Before the discovery of oil on State lands, leases could be obtained under the 1913 Act for ten cents an acre and a flat one-eighth royalty. Under the 1929 Act all leases are now let on competitive bidding, the bids including both the cash consideration and the amount of royalty the lessee is willing to pay.

As stated in Ambrosini v. United States, 187 U. S. 1, "They are not mere individual undertakings to secure a personal privilege, as suggested by the court below" but means for the development of the State's resources for its own benefit. In the last analysis the test can not be more clearly stated than it was in Railroad v. Peniston, 85 U. S. (18 Wall.) 5, 36:

> "It is, therefore, manifest that **exemption of Federal agencies from State taxation is dependent, not upon the nature of the agents, or upon the mode of their constitution, or upon the fact that they are agents, but upon the effect of the tax;** that is, upon the question whether the tax does in truth deprive them of power to serve the government as they were intended to serve it, or does hinder the efficient exercise of their power."

Just as this court said in reference to national banks in Farmers & Mechanics National Bank v. Dearing, 91 U. S. 29, "of the degree of the necessity for creating them Congress is the sole judge," so here as to all questions concerning the creation of these leases and their terms, the relation to exist between the State and

its lessees, whether the title to all the minerals in place should be vested in the lessee subject to forfeiture or whether the State should retain title thereto until actually produced, the State was the sole judge.

This court has held exempt from State taxation varied forms of Federal instrumentalities. Patents on inventions, Long v. Rockwood, 277 U. S. 142; national banks, Owensboro National Bank v. Owensboro, 173 U. S. 664; Federal bonds and securities, Bank of Commerce v. New York City, 67 U. S. (2 Black) 620; Bank Tax Case, 69 U. S. (2 Wall.) 200; Home Savings Bank v. Des Moines, 205 U. S. 503; Miller v. Milwaukee, 272 U. S. 713; franchises to railroads, California v. Central Pacific R'y Co., 127 U. S. 1, and to telegraph companies, Telegraph Company v. Texas, 105 U. S. 460, Williams v. City of Talladega, 226 U. S. 404; sellers of gasoline to the Federal government, Panhandle Oil Company v. Knox, 277 U. S. 218, Graysburg Oil Company v. Texas, 278 U. S. 582. Petitioner is as important an agency of the State of Texas as any of these were of the United States.

This court has repeatedly refused to sustain an invalid tax merely because the State sought to give it a particular name.

> "Neither the State courts nor the legislatures, by giving the tax **a particular name** or by the use of some form of words, can take away our duty to consider its nature and effect." Galveston, Harrisburg & San Antonio R'y Co. v. Texas, 210 U. S. 217, 227.

See also Choctaw, Oklahoma & Gulf Railroad Company v. Harrison, 235 U. S. 292, 298; Lacoste v. Department of Conservation, 263 U. S. 545, 550.

"If, by varying the form—that is to say, if, by using one name for a tax instead of another, or imposing a tax in terms upon one subject when another is in reality aimed at—the substance and effect of the imposition may be changed, constitutional limitations upon powers of taxation would come to naught. * * *

"A liberal application of the foregoing principles, which find confirmation especially in the later decisions of this court, is essential to the preservation of the constitutional limitations imposed upon the taxing power of the States. Let it once be conceded that such limitations may be evaded by the adoption of **a delusive name** to characterize the tax or form of words to describe it, and the destruction of the vitality of these necessary safeguards will soon follow." The Macallen Company v. Massachusetts, 279 U. S. 620, 626, 631.

To sustain these taxes by calling petitioner's leases sales under the technical construction of the Texas Constitution is to resort to the use of a delusive name, to regard form of greater importance than substance, and to fail to make the proper application of the foregoing principles.

As heretofore stated respondent urged the Theisen case as a defense in both the District Court and the Circuit Court of Appeals. The District Court considered it and held it was not in point. The Circuit Court of Appeals referred to it, but its opinion demonstrates that it did not base its decision upon the holding in that case. If it did, we submit it was in error.

Point D.

By Section 27 of the 1917 Act the State of Texas did not grant permission to the United States to levy these

income taxes upon petitioner, its instrumentality, and these taxes may not be levied without the express consent of the State.

We have purposely delayed discussing the point upon which the Circuit Court of Appeals based its decision that petitioner was subject to the Federal income tax. That court so held on the sole ground that by Section 27 of the 1917 Act, which reads "Rights acquired under this Act shall be subject to taxation as is other property," the State gave its consent to the levy of these taxes by the Federal government. That court said:

> "The State of Texas by throwing the leases on University lands open to taxation generally, withdrew from the lessees all rights of exemption which might otherwise have existed."

We wanted this court to appreciate fully the importance of the principles involved before considering whether the State of Texas by this simple sentence waived all the benefits that would otherwise accrue to it. These principles are not embraced in any express provision of the Constitution but as this court said in M'Culloch v. Maryland,

> "There is no express provision for the case, but the claim has been sustained on a principle which so entirely pervades the Constitution, is so intermixed with the materials which compose it, so interwoven with its web, so blended with its texture, as to be incapable of being separated from it without rending it into shreds."

If they are of so vital importance to both the Federal and the State governments, neither will be held to have waived them unless such waiver is expressed in

clear and unmistakable terms. This is the rule laid down by this court in numerous cases.

> "Whether the property of one of the States of the Union is taxable under the laws of that State depends upon the intention of the State as manifested by those laws. But whether the property of the United States shall be taxed under the laws of a State depends upon the will of its owner, the United States, and **no State can tax the property of the United States without their consent.**" Van Brocklin v. Tennessee, 117 U. S. 151, 175.

> "It follows then necessarily from these conclusions that the respective States would be wholly without power to levy any tax, either direct or indirect, upon the national banks, their property, assets or franchises, **were it not for the permissive legislation of Congress.**" Owensboro National Bank v. Owensboro, 173 U. S. 664, 668.

> "It is elementary that the Federal Government in all its activities is independent of State control. This rule is broadly applied. And, **without congressional consent,** no Federal agency or instrumentality can be taxed by State authority." Jaybird Mining Company v. Weir, 271 U. S. 609, 613.

In Bank of California v. Richardson, 248 U. S. 476, in speaking of the section of the United States Revised Statutes defining the taxes States could levy on national banks, this court said at page 483:

> "There is also no doubt from the section that it was intended to comprehensively control the subject with which it dealt and thus to furnish the exclusive rule governing State taxation as to the Federal agencies created as provided in the section. All possibility of dispute to the contrary is foreclosed by the decisions of this court."

Upon the same subject, in First National Bank v. Adams, 258 U. S. 362, this court said at page 364:

> "Section 5219 Revised Statutes (copied below) prescribes the full measure of the power of the several States to impose taxes upon national banking associations or their stockholders. **Any assessment not in conformity therewith is unauthorized and invalid.**"

In Heiner v. Colonial Trust Company, 275 U. S. 232, this court, in holding that Federal lessees of Indian lands, which it had previously held in the Oklahoma cases were exempt from State taxation, were subject to the Federal income tax, said on pages 234-235:

> "The power of the United States to tax the income is undoubted. It seems to us extravagant, in the face of the comprehensive language of the statute, to infer that Congress did not intend to exercise that power merely **because, in the absence of Congressional consent, it is one withheld from the States** or because the tax in terms imposed on others may have some economic effect upon the Indians themselves."

There is no reference whatever in Section 27 to Federal taxation. Direct taxes by the United States are the exception. In fact there have been no such direct ad valorem taxes on property since shortly after the Civil War.

In those instances where the Federal government has permitted States to tax its agencies it has been careful to express such consent clearly. In permitting State taxation of lessees of Federal lands it stated:

> "Provided, that nothing in this Act shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have, including the right to levy and

collect taxes upon improvements, output of mines or other rights, property or assets of any lessee of the United States." Mid-Northern Oil Company v. Montana, 268 U. S. 45, 48.

In the case of national banks it has permitted certain classes of State taxes, but has in each case specified in detail exactly what taxes may be levied. Section 5219, United States Revised Statutes; United States Code, Title 12, Sec. 548. This court has consistently stricken down all State taxes that did not come strictly within the permitted classes. In speaking of Sec. 5219, this court said in Owensboro National Bank v. Owensboro, 173 U. S. 664, 669:

> "This section, then, of the Revised Statutes is the measure of power of a State to tax national banks, their property or their franchises. By its unambiguous provisions the power is confined to a taxation of the shares of stock in the names of the shareholders and to an assessment of the real estate of the bank. Any State tax therefore which is in excess of and not in conformity to these requirements is void."

In removing the exemption of minerals on Indian lands from State taxation it uses clear and unambiguous terms.

> "All minerals, including oil and gas, produced on or after April 26, 1931, from restricted allotted lands of members of the Five Civilized Tribes in Oklahoma, or from inherited restricted lands of full-blood Indian heirs or divisees of such lands, shall be subject to all State and Federal taxes of every kind and character the same as those produced from lands owned by other citizens of the State of Oklahoma." 45 Stats. 495, Ch. 517, Sec. 3.

That Section 27 was intended to apply only to State

taxation becomes even more apparent when the circumstances surrounding its passage are considered. It first appeared as Section 28 of the 1913 Leasing Act, as follows:

> "The rights acquired under this Act shall be subject to taxation as is other property after the owner shall have paid to the State the sums necessary to perfect his rights."

At that time and for several years afterward the exact nature of the interest of an oil and gas lessee in the leased premises was very unsettled in Texas. Some contended that, as oil and gas were fugitive substances, the lessor himself had no title to them while in place, and therefore a lease conveyed to the lessee no title or estate in the land or in the oil but only the right to explore and, if discovered, sever the oil from the land when produced. (See argument on pp. 226-227 in Texas Company v. Daugherty, 107 Tex. 226.) They contended that the lessee had no interest in land or real estate that was taxable under Revised Statutes 1911, Art. 7504, defining property subject to taxation as follows:

> "Real property, for the purpose of taxation, shall be construed to include the land itself, whether laid out in town lots or otherwise, and all the buildings, structures and improvements, or other fixtures of whatsoever kind thereon, and all the rights and privileges belonging or in anywise appertaining thereto, and all mines, minerals, quarries and fossils in and under the same."

In 1913 the right of the State under this article to tax the lessee was being seriously contested by the Texas Company and other oil companies in the case of Texas Company v. Daugherty, 160 S. W. 129 (opinion by the Court of Civil Appeals of July 5, 1913), 107 Tex.

226, 176 S. W. 717 (opinion of the Supreme Court of May 21, 1915), just at the time Section 28 was placed in the Leasing Act of April 9, 1913. The intent of the legislature was to insure that lessees of State lands would pay the State and its subdivisions taxes based on the value of the leases the same as other property owners paid.

This is further illustrated by the contemporaneous House Bill No. 812 introduced in the Legislature on March 8, 1913. (The journal of the Texas Legislature seldom prints bills that are introduced and does not give any report of legislative debates or proceedings before committees. We have therefore had placed in the Record at page 69, a copy of this bill and the committee report, certified by the Secretary of State of Texas, the official custodian of the originals. A copy is inserted in the Appendix to this brief at page *xlix.*) This proposed to amend Article 7504 by adding the following:

> "also all leasehold interests whereby the lessee, grantee or licensee is authorized to mine and prospect for and take from lands, stone, granite, marble, fossils, minerals of any kind, including oil and gas."

The end sought was set forth in the emergency clause:

> "Sec. 2. The fact that the right of the State to tax leasehold interests in lands under which the lessee, grantee or licensee is permitted to prospect for and mine or take from said lands minerals, including oil and gas, is being disputed by the owners of said leasehold interests, and the State is being foreed to have litigation with such persons, therefore the necessity to render the law of this State upon said subject beyond cavil or the possibility of a doubt, creates an emergency, etc."

It is clear therefore the purpose of Section 28 of the 1913 Act was simply to insure beyond cavil or the possibility of a doubt that the State's lessees would pay State taxes on their leases.

Texas Company v. Daugherty was not decided by the Court of Civil Appeals until July 5, 1913, and by the Supreme Court until May 21, 1915. Even then the question was still unsettled, and it was not until the decision on June 30, 1923, in Stephens County v. Mid-Kansas Oil & Gas Company, 113 Tex. 160, 254 S. W. 290, that the Supreme Court definitely held that regardless of the granting clause of a lease, whether it is "grant, bargain, sell and convey" as in the Texas Company case, or "let and lease" as in the Stephens County case, or in any other words, the lessee's leasehold interest is a taxable estate in real property. As the law was still in this unsettled condition when the 1917 Leasing Act was passed, this Section 28 was carried forward as Section 27 to insure that the leases would be subject to State taxes. When it became finally settled by the Stephens County case in 1923, this provision was entirely omitted from the Leasing Acts of 1925 and 1929. This later action of the Legislature clearly shows it had in mind only State taxation when it inserted Sections 28 and 27, respectively, in the 1913 and 1917 Acts. When the end sought by the legislature in enacting those sections had been fully attained by the decisions in Texas Company v. Daugherty and Stephens County v. Mid-Kansas Oil & Gas Company, it dropped them from the Leasing Acts.

The Circuit Court of Appeals based its decision on the opinion of this court in Shaw v. Gibson-Zahniser Oil Corporation, 276 U. S. 575, stating that Section 27

was no broader than the provision in that case subjecting Indian lands to State taxation. For comparison we set the two sections out as follows:

Section 27 of Texas Act:	Section 4 of Federal Act:
"Rights acquired under this Act shall be subject to taxation as is other property."	"All land from which restrictions have been or shall be removed shall be subject to taxation and all other civil burdens as though it were the property of other persons than allottees of the Five Civilized Tribes."

The opinion in that case reviews the circumstances surrounding its passage and points out that Congress intended this to relate to State taxation as part of an established program of gradually converting the Indians into an independent and self-reliant people by granting them the privileges of citizens and developing their sense of responsibility by placing on them the burdens of citizenship. As this court said in that opinion:

> "In this (that is, the Act of 1908), as in other Indian legislation, opportunity is afforded for their emancipation by imposing upon them duties as well as giving them the privileges of citizens and property owners, **including the duty to pay taxes.**" (Page 580.)

Furthermore the provision of Section 4 was inserted at the request of Oklahoma for the specific purpose of allowing it to tax these lands, as was pointed out at page 581:

> "This section was adopted in response to representations that the revenue of the State of Okla-

homa was insufficient for State purposes, that large areas of lands within the State allotted to Indians were exempt from taxation as agencies of the Federal Government and that Indian citizens were enjoying the benefit of local government without taxation."

The end sought by Congress in enacting Section 4 was to make these Indian lands expressly subject to State taxation. The end sought by Texas in enacting Section 27 was to insure the leases being subject to taxation by the State and its subdivisions with no thought as to Federal taxation. Therefore that case does not support the Circuit Court of Appeals in its construction of Section 27.

The mere fact that the leases are subject to State taxation does not take away their exemption from Federal taxation. The Texas statutes, Article 7147, R. S. 1925, provide that "bonds" and "all public stock and securities" shall be subject to taxation, but the Federal government may not tax the income therefrom. Pollock v. Farmers Loan & Trust Company, 157 U. S. 429. The Federal income tax law applies to Federal employees, but this does not allow a State to tax them.

If the Circuit Court of Appeals were correct, this anomalous result would follow. If three lessees held leases on three adjoining tracts of University land, one under the 1917 Act, one under the 1925 Act and the other under the 1929 Act, the 1917 lessee would pay the Federal taxes but the other two would not as their Acts do not contain Section 27 of the 1917 Act. It is upon that section the Circuit Court of Appeals sustained these taxes. The Legislature of this State never intended such an unequal burden of taxation to be placed on the State's lessees.

It is submitted the Circuit Court of Appeals was in error in construing Section 27 as authorizing the collection of these Federal taxes.

Point E.

Section 27 of the 1917 Act was repealed on March 10, 1925, before the taxes involved in this cause were levied or became due and payable.

The first taxes sued for were paid for the fiscal year ending June 30, 1925. (R. 4.) The income tax return for that year was not due to be filed until September 15, 1925. Sec. 227 (*a*) of the Revenue Acts of 1924 and 1926. The 1925 Leasing Act was approved and became effective on March 10, 1925.

The 1917 Act dealt with University lands and all other lands of the State. The 1925 Act dealt solely with University lands and as to such lands repealed the 1917 Act. Theisen v. Robison, 117 Tex. 489, 512.

In The Paquete Habana, 175 U. S. 677, this court said at page 685:

> "And it is a well settled rule in the construction of statutes, often affirmed and applied by this court, that, 'even where two Acts are not in express terms repugnant, yet if the latter Act **covers the whole subject of the first, and embraces new provisions, plainly showing that it was intended as a substitute for the first Act,** it will operate as a repeal of that Act.' United States v. Tynen, 11 Wall. 88, 92; King v. Cornell, 106 U. S. 395, 396; Tracy v. Tuffly, 134 U. S. 206, 223; Fisk v. Henarie, 142 U. S. 459, 468; District of Columbia v. Hutton, 143 U. S. 18, 27; United States v. Healey, 160 U. S. 136, 147."

In St. Louis & Southwestern Railway Company v. J. A. Kay Company, 85 Tex. 558, 22 S. W. 665, the court said at page 560:

> "In Rogers v. Watrous (8 Tex. 62), *supra*, Judge Wheeler says: 'A subsequent statute revising the subject-matter of a former one, and evidently intended as a substitute for it, although it contains no express words to that effect, must operate to repeal the former to the extent to which its provisions are revised and supplied. So, though a subsequent statute be not repugnant in its provisions to a former one, yet if it was clearly intended to prescribe the only rules which should govern, it repeals the prior statute'."

See also Tracy v. Tuffly, 134 U. S. 206, 223; First National Bank v. Lee County Cotton Oil Company, 274 S. W. 127 (Tex. Com. of Appeals).

The 1925 Act covered the entire subject of oil and gas leases on University lands, and thereafter all such leases were granted subject to its provisions and not those of the 1917 Act. It is true such repeal could not affect the rights granted by the State to lessees under prior Acts, and the 1925 Act did not attempt to cancel such leases. However, it did repeal the provision of Section 27 dealing with taxation. There was no reason for a special provision like Section 27 to remain applicable to 1917 leases for State taxation purposes, while 1925 leases were subject to State taxes only under the general taxing laws.

Furthermore, as heretofore pointed out, if Section 27 has the effect attributed to it by the Circuit Court of Appeals, lessees holding under the 1917 Act would be subject to the Federal income taxes while those under the 1925 and 1929 Acts would not. The Legislature

never intended such a manifestly unequal burden of taxation to result. It would be contrary to the general policy of all governments that taxes shall be equal and uniform, and would violate the express provision of Article VIII, Section 1, of the Texas Constitution that

"Taxation shall be equal and uniform."

We submit that Section 27 was not in effect when the taxes in this cause were levied and collected.

Point F.

It is immaterial that the State of Texas is not a party to this cause and is not affirmatively asserting that petitioner is exempt from the Federal income tax.

The Circuit Court of Appeals is not clear in its opinion but seems to attach some importance to the fact that the State is not a party and has not sought affirmatively to exempt its lessees from these taxes.

In all the cases before this court it has been the instrumentality that has resisted the taxes and not the government creating it. In none of the cases has the United States or a State been a party. In fact the refund of the taxes is to be made to petitioner and the State is neither a necessary nor a proper party to this cause. The State of Texas is a party to this cause through petitioner. It is representing the interests of the State and is asserting its claims as the representative of the State. The State is not required to assert affirmatively the exemption claimed by petitioner. On the other hand the exemption stands until it is clearly and unmistakably waived by the State.

Conclusion.

We submit that this case is in principle identical with that of Gillespie v. Oklahoma, 257 U. S. 501, and that the words of this court in that case

> "'A tax upon the leases is a tax upon the power to make them, and could be used to destroy the power to make them.' 240 U. S. 530. The step from this to the invalidity of the tax upon income from the leases is not long,"

are strictly applicable to the leases of petitioner and its income therefrom.

It is respectfully submitted that the petition should be granted.

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APPENDIX A

Resolutions Resulting in Annexation of Texas.

The following is a copy of the joint resolution of the Congress of the United States, 5 Stats. 797:

No. 8. Joint Resolution for annexing Texas to the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress doth consent that the territory properly included within, and rightfully belonging to the Republic of Texas, may be erected into a new State, to be called the State of Texas, with a republican form of government, to be adopted by the people of said Republic, by deputies in convention assembled, with the consent of the existing government, in order that the same may be admitted as one of the States of this Union.

2. And be it further resolved, That **the foregoing consent of Congress is given upon the following conditions, and with the following guarantees,** to wit: First, Said State to be formed, subject to the adjustment by this government of all questions of boundary that may arise with other governments; and the Constitution thereof, with the proper evidence of its adoption by the people of said Republic of Texas, shall be transmitted to the President of the United States, to be laid before Congress for its final action, on or before the first day of January, one thousand eight hundred and forty-six. Second: **Said State,** when admitted into the Union, after ceding to the United States, all public edifices, fortifications, barracks, ports and harbors, navy and navy-yards, docks, magazines, arms, ar-

maments, and all other property and means pertaining to the public defense belonging to said Republic of Texas, shall retain all the public funds, debts, taxes, and dues of every kind, which may belong to or be due and owing said republic; and **shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of the debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct;** but in no event are said debts and liabilities to become a charge upon the Government of the United States. Third. New States, of convenient size, not exceeding four in number, in addition to said State of Texas, and having sufficient population, may hereafter, by the consent of said State, be formed out of the territory thereof, which shall be entitled to admission under the provisions of the Federal Constitution. And such States as may be formed out of that portion of said territory lying south of thirty-six degrees thirty minutes north latitude, commonly known as the Missouri compromise line, shall be admitted into the Union with or without slavery, as the people of each State asking admission may desire. And in such State or States as shall be formed out of said territory north of said Missouri compromise line, slavery, or involuntary servitude (except for crime), shall be prohibited.

3. And be it further resolved, That if the President of the United States shall in his judgment and discretion deem it most advisable, instead of proceeding to submit the foregoing resolution to the Republic of Texas, as an overture on the part of the United States for admission, to negotiate with that Republic; then,

Be it resolved, That a State, to be formed out of the present Republic of Texas, with suitable extent and boundaries, and with two representatives in Congress, until the next apportionment of representation, shall be admitted into the Union, by virtue of this act, on an equal footing with the existing States, as soon as the terms and conditions of such admission, and the cession of the remaining Texian territory to the United States shall be agreed upon by the Governments of Texas and the United States: And that the sum of one hundred thousand dollars be, and the same is hereby, appropriated to defray the expenses of missions and negotiations, to agree upon the terms of said admission and cession, either by treaty to be submitted to the Senate, or by articles to be submitted to the two houses of Congress, as the President may direct.

APPROVED, March 1, 1845.

* * * * * * *

After the adoption of this resolution, the Congress of the Republic of Texas adopted the following resolution set forth in 2 Gammel's Laws of Texas, page 1200.

Joint Resolution.

Giving the consent of the existing Government to the annexation of Texas to the United States.

Whereas, the Government of the United States hath proposed the following terms, guarantees, and conditions, on which the People and Territory of the Republic of Texas may be erected into a new State, to be called the State of Texas, and admitted as one of the States of the American Union, to wit:

"Resolved by the Senate and House of Representa-

tives of the United States of America in Congress assembled, That Congress doth consent that the Territory properly included within and rightfully belonging to the Republic of Texas may be erected into a new State, to be called the State of Texas, with a Republican form of Government, to be adopted by the people of said Republic, by deputies in Convention assembled, with the consent of the existing Government, in order that the same may be admitted as one of the States of this Union.

"2. And be it further resolved, That the foregoing consent of Congress is given upon the following conditions, and with the following guarantees, to wit:

"First. Said State to be formed subject to the adjustment by this Government of all questions of boundary that may arise with other Governments, and the Constitution thereof, with the proper evidence of its adoption, by the people of said Republic of Texas, shall be transmitted to the President of the United States, to be laid before Congress for its final action, on or before the first day of January, one thousand eight hundred and forty-six.

"Second. Said State when admitted into the Union after ceding to the United States all public edifices, fortifications, barracks, ports and harbors, navy and navy-yards, docks, magazines, arms, armaments and all other property and means pertaining to the public defence, belonging to the said Republic of Texas, shall retain all the public funds, debts, taxes, and dues of every kind which may belong to or be due and owing said Republic; and shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of the debts and liabilities of said

Republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct; but in no event are said debts and liabilities to become a charge upon the Government of the United States.

"THIRD. New States of convenient size, not exceeding four in number, in addition to said State of Texas, and having sufficient population, may hereafter, by the consent of said State, be formed out of the territory thereof, which shall be entitled to admission under the provisions of the Federal Constitution. And such States lying south of thirty-six degrees thirty minutes north latitude, commonly known as the Missouri compromise line, shall be admitted into the Union, with or without slavery, as the people of each State asking admission may desire. And in such State or States as shall be formed out of said territory north of said Missouri compromise line, slavery or involuntary servitude except for crime shall be prohibited."

And whereas, by said terms, the consent of the existing government of Texas is required—Therefore,

Be it resolved by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That the Government of Texas doth consent, that the People and Territory of the Republic of Texas, may be erected into a new State, to be called the State of Texas, with a Republican form of Government, to be adopted by the people of said Republic, by Deputies in Convention assembled, in order that the same may be admitted as one of the States of the American Union, and **said consent is given on the terms, guarantees and conditions set forth in the Preamble to this Joint Resolution.**

SEC. 2. Be it further resolved, That, the Proclamation of the President of the Republic of Texas, bearing date May fifth, eighteen hundred and forty-five, and the election of Deputies to set in Convention, at Austin on the fourth day of July next for the adoption of a Constitution for the State of Texas, had in accordance therewith, hereby receives the consent of the existing Government of Texas.

SEC. 3. Be it further resolved, That, the President of Texas is hereby requested immediately to furnish the Government of the United States, through their accredited Minister near this Government, with a copy of this Joint Resolution; also to furnish the Convention to assemble at Austin, on the fourth of July next, a copy of the same—And the same shall take effect from and after its passage.

JOHN M. LEWIS,
Speaker of the House of Representatives
K. L. ANDERSON,
President of the Senate.

Approved, June 23, 1845.

ANSON JONES.

Thereafter the Convention of the People of the Republic of Texas adopted a similar resolution on July 4, 1845. This resolution is practically identical with the foregoing and is not here copied. It may be found in 2 Gammel's Laws of Texas, page 1228.

* * * * *

After these resolutions had been adopted, the Congress of the United States adopted the following resolution formally admitting Texas into the Union, which resolution is set forth in 9 United States Statutes at Large, page 108.

(No. 1.)—Joint Resolution for the Admission of the State of Texas into the Union.

Whereas the Congress of the United States, by a joint resolution approved March the first, eighteen hundred and forty-five, did consent that the territory properly included within, and rightfully belonging to, the Republic of Texas, might be erected into a new State, to be called THE STATE OF TEXAS, with a republican form of government, to be adopted by the people of said republic, by deputies in convention assembled, with the consent of the existing government, in order that the same might be admitted as one of the States of the Union; which consent of Congress was given upon certain conditions specified in the first and second sections of said joint resolution; and whereas the people of the said Republic of Texas, by deputies in convention assembled, with the consent of the existing government, did adopt a Constitution, and erect a new State with a republican form of government, and, in the name of the people of Texas, and by their authority, did ordain and declare that they assented to and accepted the proposals, conditions, and guaranties contained in said first and second sections of said resolution; and whereas the said Constitution, with the proper evidence of its adoption by the people of the Republic of Texas, has been transmitted to the President of the United States and laid before Congress, in conformity to the provisions of said joint resolution:

Therefore—

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of Texas shall be one, and is hereby declared to be one, of the United States of America,

and admitted into the Union on an equal footing with the original States in all respects whatever.

SECTION 2. And be it further resolved, That until the representatives in Congress shall be apportioned according to an actual enumeration of the inhabitants of the United States, the State of Texas shall be entitled to choose two representatives.

APPROVED December 29, 1845.

APPENDIX B

Sections 10, 11, 12, 13, 14 and 15 of Article VII of the Constitution of the State of Texas, Pertaining to the University of Texas.

SEC. 10. The legislature shall, as soon as practicable, establish, organize and provide for the maintenance, support and direction of a university of the first class, to be located by a vote of the people of this State, and styled, "The University of Texas," for the promotion of literature, and the arts and sciences, including an agricultural and mechanical department.

SEC. 11. In order to enable the legislature to perform the duties set forth in the foregoing section, it is hereby declared that all lands and other property heretofore set apart and appropriated for the establishment and maintenance of the University of Texas, together with all the proceeds of sales of the same, heretofore made or hereafter to be made, and all grants, donations and appropriations that may hereafter be made by the State of Texas, or from any other source, shall constitute and become a permanent university fund. And the same as realized and received into the treasury of the State (together with such sum belonging to the fund, as may now be in the treasury), shall be invested in bonds of the State of Texas, if the same can be obtained; if not, then in United States bonds; and the interest accruing thereon shall be subject to appropriation by the legislature to accomplish the purpose declared in the foregoing section; provided, that the one-tenth of the alternate sections of the lands

granted to railroads, reserved by the State which were set apart and appropriated to the establishment of the University of Texas, by an Act of the Legislature of February 11, 1858, entitled "An Act to establish 'the University of Texas'," shall not be included in, or constitute a part of, the permanent university fund.

SEC. 12. The land herein set apart to the university fund shall be sold under such regulations, at such times, and on such terms as may be provided by law; and the legislature shall provide for the prompt collection, at maturity, of all debts due on account of university lands heretofore sold, or that may hereafter be sold, and shall in neither event have the power to grant relief to the purchasers.

SEC. 13. The Agricultural and Mechanical College of Texas, established by an Act of the Legislature, passed April 17, 1871, located in the County of Brazos, is hereby made and constituted a branch of the University of Texas, for instruction in agriculture, the mechanic arts, and the natural sciences connected therewith. And the legislature shall, at its next session, make an appropriation, not to exceed forty thousand dollars, for the construction and completion of the buildings and improvements and for providing the furniture necessary to put said college in immediate and successful operation.

SEC. 14. The legislature shall, also, when deemed practicable, establish and provide for the maintenance of a college or branch university for the instruction of the colored youths of the State, to be located by a vote of the people; provided, that no tax shall be levied, and no money appropriated out of the general revenue, either for this purpose or for the establishment and erection of the buildings of the University of Texas.

SEC. 15. In addition to the lands heretofore granted to the University of Texas, there is hereby set apart and appropriated for the endowment, maintenance, and support of said university and its branches, one million acres of the unappropriated public domain of the State; to be designated and surveyed as may be provided by law; and said lands shall be sold under the same regulations, and the proceeds invested in the same manner, as is provided for the sale and investment of the permanent university fund, and the legislature shall not have the power to grant any relief to the purchasers of said lands.

APPENDIX C

Act of March 16, 1917—35th Legislature, P. 158.
Chapter 83.

An Act to Amend Chapter 173 *of the Regular Session of the Thirty-third Legislature approved April* 9, 1913, *relating to the prospecting for and the development of the minerals and other substances in the public land, public islands and public waters and river beds and channels owned by the State, and in the unsold land belonging to the public free school fund, the University fund and the several asylums fund and in such of said land as has heretofore been sold or may hereafter be sold with the reservation of the minerals and other substances therein to the fund to which the land belongs; providing the royalty and other sums and compensation to be paid to the State and owners of the surface, and appropriating the proceeds to certain funds; providing for ingress and egress; providing one may pay cash for mineral claims, and obtain patents and change former claims to rights under this Act; providing for the adoption of rules and regulations by the Commissioner of the General Land Office, repealing the remaining portion of this said Chapter* 173 *which may not be amended and all other statutes in conflict with this Act, and declaring an emergency.*

Be It Enacted By the Legislature of the State of Texas:

SECTION 1. All of Chapter 173 of the Regular Session of the Thirty-third Legislature approved April 9, 1913, shall be so amended as to hereafter read as follows:

SECTION 1. All public school, University and Asylum land and other public lands, fresh water lakes, river beds and channels, islands, bays, marshes, reefs and

salt water lakes belonging to the State and all lands which may hereafter be so owned and all of said lands which have heretofore been sold or disposed of by the State or by its authority with a reservation of minerals or mineral rights therein as well as all lands which may hereafter be sold with the reservation of minerals or mineral rights therein, and lands purchased with a relinquishment of the minerals therein, shall be included within the provisions of this Act and shall be open to the prospecting for and the development of the minerals and substances known as gold, silver, cinnebar, lead, tin, copper, zinc, platinum, radio-active minerals, tungsten, ores of aluminum, coal, lignite, iron ore, kaolin fire clays, barite, marble, petroleum, natural gas, gypsum, nitrates, asbestos, marls, salt, onyx, turquoise, mica, guano, bismuth and bismuth bearing minerals, asphalt, potash compounds, sulphur, graphite, magnesia, fuller's earth, molybdenum and molybdenum bearing minerals upon the terms and conditions provided in this Act.

SECTION 2. Any person or association of persons, corporate or otherwise, being a citizen of the United States or having declared an intention of becoming such, desiring to obtain the right to prospect for and develop the minerals and substances named above that may be in any of the areas included herein may do so under the provisions of this Act together with such rules and regulations as may be adopted by the Commissioner of the General Land Office relative thereto and necessary for the execution of the purposes of this Act.

SECTION 3. One desiring to obtain the right to prospect for and develop petroleum oil and natural gas that may be in any of the surveyed areas included

herein shall file with the County Clerk an application in writing giving a designation of same sufficient to identify it. The county clerk shall, upon receipt of one dollar as a filing fee, file and record the application and note the same on his record of surveys opposite the entry of the proper survey, giving the time of filing. When one has obtained four sections or that equivalent eligible to be embraced in one permit such applicant shall not obtain any more land within two miles thereof, but if one obtains less than four sections eligible to be embraced in one permit such one may obtain such additional area within two miles of the other area as will equal four sections. One shall not obtain more than one thousand acres within one mile of a well producing petroleum.

SECTION 4. One desiring to obtain the right to prospect for and develop petroleum and natural gas in any of the State's unsurveyed areas named in this Act shall file with the county surveyor an application in writing for each area applied for, giving a designation of same sufficient to identify it, but such area shall not exceed 2560 acres. Upon receipt of one dollar filing fee the surveyor shall file and record the application.

SECTION 5. When the Commissioner receives an application that was filed with the county Clerk or an application that was filed with the surveyor and the field notes and plat, one dollar filing fee and ten cents per acre for each acre applied for and a sworn statement by the applicant showing what interest he has in other permit, lease or patent issued under this Act and in good standing, he shall file same, and if upon examination the application or the application and field notes are found correct and the area applied for is within

the provisions of this Act the Commission shall issue to the applicant or his assignee a permit conferring upon him an exclusive right to prospect for and develop petroleum and natural gas within the designated area for a term not to exceed two years.

SECTION 6. Before the expiration of six months after the date of the permit the owner thereof shall in good faith begin actual work necessary to the physical development of said area and if petroleum or natural gas is not sooner developed in commercial quantities the owner or manager shall, within thirty days after the expiration of one year from the date of the permit, file in the General Land Office a sworn statement supported by two disinterested credible persons that such actual work was begun within the first six months aforesaid and that a bona fide effort to develop the said area was made during the six months preceding the filing of the statement and showing what work was done and expenditures incurred and whether or not petroleum or natural gas had been discovered in commercial quantities. A failure to file the statement herein provided for within the time specified or the filing of a statement untrue or false in material matters shall subject the permit to forfeiture and the termination of the rights of the owner. The owner of a permit shall not take, carry away or sell any petroleum or natural gas before obtaining a lease therefor; provided, such quantity as may be necessary for the continued development of the area before obtaining a lease may be used without accounting therefor.

SECTION 7. If at any time within the life of a permit one should develop petroleum or natural gas in commercial quantities the owner or manager shall file in

the General Land Office a statement of such development within thirty days thereafter, and thereupon the owner of the permit shall have the right to lease the area included in the permit upon the following conditions:

1. An application and a first payment of two dollars per acre for a lease of the area included in the permit shall be made to the Commissioner of the General Land Office within thirty days after the discovery of petroleum or natural gas in commercial quantities.

2. Upon the payment of two dollars per acre for each acre in the permit a lease shall be issued for a term of ten years or less, as may be desired by the applicant, and with the option of a renewal or renewals for an equal or shorter period, and annually after the expiration of the first year after the date of the lease the sum of two dollars per acre shall be paid during the life of the lease; and in addition thereto the owner of the lease shall pay a sum of money equal to a royalty of one-eighth of the value of the gross production of petroleum. The owner of a gas well shall pay a royalty of one-tenth of the value of the meter output of all gas disposed of off the premises.

3. The royalties shall be paid to the State through the Commissioner of the General Land Office at Austin, monthly during the life of the lease. All payments shall be accompanied by the sworn statement of the owner or manager or other authorized agent showing the amount produced since the last report and the market value of the output and a copy of all pipe line receipts, tank receipts, gauge of all tanks into which petroleum may have been run, or other checks and memoranda of amount put out or into pipe lines or

tanks or pools. The books and accounts, the receipts and discharges of all pipe lines, tanks and pools and gas lines and gas pipes and all other matters pertaining to the production, transportation and marketing of the output shall be open to the examination and inspection at all times by the Commissioner of the General Land Office or his representative or any other person authorized by the Governor or Attorney General to represent the State. The value of any unpaid royalty and any sum due the State under this Act upon any lease shall become as prior lien upon all production produced upon the leased areas and the improvements situated thereon to secure the payment of any royalty and any sum due the State arising under the operation of any portion of this Act.

4. The permit or lease shall contain the terms upon which it is issued including the authority of the Commissioner to require the drilling of wells necessary to offset wells drilled upon adjacent private land, and such other matters as the Commissioner may deem important to the rights of the applicant or the State.

SECTION 8. In the event the surface of an area included within the operations of this Act has heretofore been or may hereafter be acquired by one prior to the filing of an application under the provisions herein such area shall nevertheless be subject to prospect and lease as provided herein but the owner of the permit or lease shall pay to the owner of the surface annually in advance during the life of the permit or lease, ten cents per acre and the sum so paid and accepted by the surface owner shall be full compensation for all damages to the surface.

SECTION 9. Every person or association of persons,

corporate or otherwise, applying for a permit, lease or patent shall file with the application a sworn statement showing what interest the applicant has in any other permit or lease issued by the State and in good standing at the date of the statement.

Coal and Lignite.

(Sections 10-11-12-13-14 and 15 deal solely with the development of minerals other than oil and gas and these sections are not here copied.)

General Provisions.

SECTION 16. The general provisions in this and the following section shall apply to all the foregoing provisions so far as applicable.

Surveyed land within the meaning of this Act shall include all tracts for which there are approved field notes on file in the General Land Office and eighty acre tracts and multiples thereof of such surveys.

Unsurveyed areas within the meaning of this Act include all areas for which there are no approved field notes on file in the General Land Office.

All applications for surveyed land shall be filed with the clerk of the county in which the tract or a portion thereof is situated or with the clerk of the county to which such county may be attached for judicial purposes and accompanied by one dollar filing fee, and it shall be filed in the General Land Office within thirty days after it was filed with the county clerk and accompanied by one dollar filing fee.

All applications for unsurveyed areas shall be filed with the county surveyor, or his deputy, of the county

in which the area or a part thereof is situated, accompanied by one dollar filing fee, but if such county has no surveyor then the application shall be filed with the clerk of the proper county and by him recorded in the surveyor's records, and in that event the area may be surveyed by the surveyor of the nearest county as now provided by law. The area shall be surveyed within ninety days and the application, field notes and plat shall be filed in the General Land Office, accompanied by a filing fee of one dollar, within one hundred days after the date of the filing of the application.

The payment per acre required to be made before the issuance of a permit shall be paid annually thereafter during the life of the permit or lease.

A separate written application shall be made for the area desired in a permit. No permit, lease or patent shall embrace the area in two or more applications.

No application, permit, lease or patent shall embrace a divided area.

Whole tracts of surveyed land may be applied for as a whole or in eighty-acre tracts or multiples thereof without furnishing field notes therefor.

A duplicate of every permit and lease shall be kept in the General Land Office.

The area in each permit shall be developed independently of other areas.

When one desires a lease or patent any one or more whole tracts in the permit may be abandoned by relinquishment filed in the General Land Office as herein provided and thereupon obtain a lease or patent upon the remaining area; provided such remaining area is in a solid body,

An owner may relinquish a permit or lease at any time by having the deed of relinquishment acknowledged, recorded by the proper county clerk and filed in the General Land Office accompanied by one dollar filing fee. The Commissioner of the General Land Office shall mail notice to the proper County Clerk of the filing of the relinquishment and when said notice has had time through due course of mail to reach said clerk the area shall be subject to applications as in the first instance.

SECTION 17. The proceeds arising from activities under this Act which affects land belonging to the public free school fund, the permanent University fund and the permanent fund of the several asylums shall be credited to the permanent fund of said institutions and the proceeds arising from the activities affecting other areas shall be credited to the Game, Fish and Oyster Fund.

SECTION 18. The owner of a file or permit or lease under any provision of this Act may sell same and the rights secured thereby at any time, also fix a lien of any kind thereon to any person, association of persons, corporate or otherwise, who may be qualified to receive a permit or lease in the first instance; provided, the instrument evidencing the sale or lien shall be recorded in the county where the area or part thereof is situated or in the county to which such county may be attached for judicial purposes and same shall be filed in the General Land Office within sixty days after the date thereof accompanied with a filing fee of one dollar, and if not so filed the contract evidenced by said instrument shall be void and the obligations therein assumed shall not be enforceable; provided further, a sublease contract need not be filed in the General Land Office.

SECTION 19. If a permit or lease should be issued upon

a statement by the applicant which is false or untrue in material matters, or should the owner of a permit fail or refuse to begin in good faith the work necessary to the development of the area within the time required, or should the owner of a permit fail or refuse to proceed in good faith and with reasonable diligence in a bona fide effort to develop an area included in his permit after having begun the development, or should the owner of a permit fail or refuse to apply for a lease within the prescribed time, or should the owner of a lease fail or refuse to proceed in good faith and with reasonable diligence and in a bona fide effort to develop, operate and put out the mineral or other substance at any time during the life of the lease, or should the owner of a lease fail or refuse to make proper remittance in payment of royalty or other payments or fail or refuse to make the proper statement, or fail to furnish the required evidence of the output and market value and material matters relating thereto when requested, or fail to make the annual payment on the area when requested so to do the permit or lease, as the case may be, shall be subject to forfeiture, and when the Commissioner is sufficiently informed of the facts which subject the permit or lease to forfeiture he may declare same forfeited by proper entry upon the duplicate permit or lease kept in the General Land Office. When forfeiture has been declared a notice of that fact shall be mailed to the proper county clerk and the area shall be subject to the application of another than the forfeiting owner when the notice has had time to reach the county clerk through due course of mail; provided, the Commissioner may exercise large discretion in the matter of requiring one to develop gas wells, and provided further, that all for-

feitures may, within the discretion of the Commissioner be set aside and all rights reinstated before the rights of another intervene.

SECTION 20. An owner of any claim for any mineral or substance included in this Act may fell and remove for building or mining purposes any timber upon any of the unsold areas included within this Act, and shall also have the right to occupy within the limits of his application, permit or lease, so much of the surface thereof as may be necessary for the development of the minerals and substances therein, and shall have the right of ingress, to and from the area embraced in the file, permit, lease or patent. Ten cents per acre shall be paid to the owner of the surface and when accepted by the owner, it shall be deemed full compensation for such damages as may be occasioned to the surface through the occupancy and operation by the owner of the permit, lease or patent.

SECTION 21. Neither the filing of an application under any provision of this Act nor the issuance of a permit or lease on any of the unsold land included herein shall prevent the sale of the surface without the minerals and in case of such sale subsequent to the posting of any notice or the filing of an application the purchaser shall not be entitled to the ten cents per acre that is provided for owners of the surface at the time of filing nor shall such owner be entitled to any damages that may be occasioned by the working of any area.

SECTION 22. All development in water or on islands, marshes, reefs or river beds and channels shall be done under such regulations as will prevent the pollution of the water and for the prevention of such pollution the Commissioner of the General Land Office may call upon

the Game, Fish and Oyster Commissioner for assistance in the adoption and enforcement of rules and regulations for the protection of the waters from such pollution. The Commissioner of the General Land Office, may cancel a claim, location, file, permit or lease or patent for a failure or refusal of the owner to comply with such rules and regulations as may be adopted.

SECTION 23. Should any mineral or substance within the provisions of this Act, other than those included in the permit or lease under which one is operating, be discovered while the area is being worked for the minerals and substances embraced in such permit or lease, the owner thereof shall have a preference right for sixty days after such discovery in which to file on the area allowed one for such mineral or other substance by complying with the provisions of this Act relating to the mineral or substance so discovered, but shall not be required to pay either of the additional ten cents per acre to the State or the owner of the surface, and the remaining portion of said area shall be subject to the application of others in the same manner as if there were no pre-existing file thereon.

SECTION 24. If the owner of a claim upon any mineral or other substance named in this Act, other than petroleum and natural gas which has been acquired under any previous statute, should desire to accept the provisions of this Act and operate hereunder he may do so by filing a declaration to that effect in the General Land Office together with the payment required in the particular instance and obtain a permit or lease by complying with the provisions hereof relating thereto. The rights under such acceptance shall begin from the date the declaration is filed and the owner shall have the

same rights thereafter as is accorded those who make original filings under this Act.

SECTION 25. At any time during the life of a permit but prior to accepting a lease upon any area for any mineral or other substance included within the provisions of this Act, except petroleum and natural gas, the owner of a permit may elect to pay one hundred dollars per acre for the area embraced in his permit and obtain under the rules governing the issuance of patents to land, a patent for all the minerals that may be in such area except petroleum and natural gas in lieu of the payment of the royalty as provided in this Act; provided, however, one shall pay the prescribed royalty on all minerals and substances put out and disposed of while developing the area prior to obtaining a lease or patent.

SECTION 26. The Commissioner of the General Land Office shall have the general supervision of all matters necessary for the proper administration of this Act and he is authorized to adopt rules and regulations and to alter or amend them from time to time as he may deem necessary for the protection of the interests involved and not inconsistent with the provisions herein.

SECTION 27. Rights acquired under this Act shall be subject to taxation as is other property.

SECTION 28. Chapter 173 approved April 9, 1913, and all other laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 29. The fact that portions of the mineral statute are so incongruous and difficult of interpretation as to be almost inoperative and the fact that a law clear in its terms and ample to secure the development of the State's mineral wealth is badly needed

and the near approach to the close of the session creates an emergency and an imperative public necessity exists that the constitutional rule which requires bills to be read on three several days in each house be suspended and that this take effect from and after its passage and it is so enacted.

APPROVED March 16, 1917.

APPENDIX D

ACT OF MARCH 10, 1925, CHAPTER 71, PAGE 225, REGULAR SESSION, 39TH LEGISLATURE

An Act for the sale of oil and gas leases on university land and to provide for the extension of the time for the expiration of oil and gas permits heretofore issued on university land and the issuance of leases thereon without the payment of any further sum except royalty, and declaring an emergency.

Be It Enacted By the Legislature of the State of Texas:

SECTION 1. That all university land now unsold and all of said land that has heretofore been sold with reservation of the minerals therein and that which may hereafter be sold with reservation of the minerals therein, whether known or unknown, shall be included in this Act and leases thereon conferring upon persons, firms and corporations the right to develop the oil and natural gas that may be in said land shall be subject to sale by the Commissioner of the General Land Office in accordance with the provisions of this Act and under such rules and regulations as may be adopted by said commissioner as may be necessary to the proper execution of its purposes; provided, oil and gas permits and leases outstanding shall not be affected by this Act except as provided in Section 14 hereof.

SEC. 2. Sales of oil and gas leases on the lands included herein shall be made by the Commissioner of the General Land Office not less than once each month, when there is land in demand, and at 10 o'clock A. M. on the day fixed therefor. Sales of leases shall be for ten

cents per acre in advance for the first year and twenty-five cents per acre in advance for the second year and fifty cents per acre in advance each year thereafter until production is secured in paying quantities, but not to exceed five years, and a royalty of one-eighth of the gross production of the oil, or the value thereof, produced and saved from the leased premises delivered into such pipe line as the lessee may connect his well, or wells, and one-eighth of the gross production of gas, or the value thereof, produced and sold off the leased premises and in addition thereto such sum, if any, that one may pay therefor as provided herein.

SEC. 3. The commissioner shall advertise the land and the time when the mineral lease will be subject to sale, except as elsewhere provided in the event of tie bids. If there should be no other sufficient means for giving the necessary publicity as to what tracts will be subject to lease and the time when applications may be delivered to the General Land Office, the Commissioner shall have lists of such tracts printed for free distribution at the expense of the State, which expense shall be paid out of the appropriation for public printing. Such lists shall contain a brief designation of the tracts subject to lease and the terms upon which they may be leased and the time when applications therefor will be opened and filed in the General Land Office.

SEC. 4. Separate applications for each tract with one dollar for county clerk recording fee, and the first payment of ten cents per acre and the sum offered in addition thereto, if any, for any tract shall be delivered into the General Land Office on or before the day and hour on which the lease will be subject to sale in sealed envelopes on which shall be endorsed in sub-

stance "Application to Buy Oil and Gas," and in addition thereto the time the lease will be subject to sale. All envelopes so endorsed shall be securely kept by the Commissioner or his chief clerk unopened until the date on which applications are to be opened and at said hour either or both of them shall begin to open the envelopes in the presence of such persons as may desire to be present. All applications received up to the opening hour, whether open or sealed, endorsed or not endorsed, shall be considered as properly delivered into the General Land Office. An application which includes two or more tracts or is for a price less than the fixed royalty and ten cents per acre shall be void. When an application shall have been filed and considered and the land found to be subject to lease, the lease shall be issued for a term not to exceed five years to the applicant that pays the most, if any sum, for the area in addition to the ten cents per acre and the stipulated royalty. If production should not be secured in five years the lease shall terminate and another lease on the land again be subject to sale as in the first instance. A duplicate of the lease shall be kept on file in the General Land Office. All leases shall be forwarded by the Commissioner, with one dollar recording fee, to the proper county clerk, who shall record same and deliver the lease to the lessor or his agent. If two or more persons should offer the same price for the same area and the same should be the highest price offered, all shall be rejected and a date fixed within the discretion of the Commissioner, but not more than fifteen days after rejection, when a lease on the land will be subject to sale as in the first instance; provided no lease shall be sold for a sum less than the

tie bid without the tract having been duly advertised and offered for sale on a regular sale date. All sums paid upon rejected applications shall be returned by the State Treasurer.

SEC. 5. Whenever production is secured in paying quantities and the payment of royalty begins, the owner shall not pay any further annual rental. After production is secured in paying quantities, the owner shall be entitled to an absolute lease which shall run so long as the area produces in paying quantities, subject only to the provisions of this Act. Whenever a lease ceases to produce in paying quantities or the owner fails to pay to the State the royalty due, it shall be subject to forfeiture by the Commissioner, and when sufficiently informed of the facts which authorize a forfeiture he shall forfeit it and the area shall be again offered for sale as in the first instance.

SEC. 6. Royalty of one-eighth of the gross production, as herein provided, shall be paid to the General Land Office for the benefit of the University permanent fund on or before the twentieth day of each month for the preceding month during the life of the lease, and it shall be accompanied by the sworn statement of the owner, manager or other authorized agent showing the gross amount of oil produced and saved since the last report and the amount of gas produced and sold off the premises, and the market value of the oil and gas together with a copy of all daily gauges of tanks, gas meter readings, if any, pipe line receipts, gas line receipts and other checks or memoranda of amount produced and put into pipe lines, tanks or pools and gas lines or gas storage. The books and accounts, the receipts and discharges of all lines, tanks, pools and meters, and all contracts and other

records pertaining to the production, transportation, sale and marketing of the oil and gas shall at all times be subject to inspection and examination by the Commissioner of the General Land Office, the Attorney General, the Governor or member of the Board of Regents of the University of Texas, or the representative of either.

SEC. 7. Royalty and all other sums shall be due and payable to the State at Austin, Texas, and shall be paid to the Commissioner of the General Land Office and he shall transmit all remittances in the form received to the State Treasurer, who shall credit the permanent University fund with all amounts received from royalty. All payments shall be in the form of cash, bank draft on some State or National bank in Texas, or post office or express money order, or such other forms as may be collectible in Austin.

SEC. 8. The State shall have a first lien upon all oil and gas produced upon any leased area to secure the payment of all unpaid royalty and other sum or sums of money that may be due and become due under the provisions of this Act and may follow the same and the value thereof into the hands of any purchaser.

SEC. 9. If oil or gas should be produced in commercial quantities in a well on an adjoining area whether privately owned, or covered by separate lease, which well should be within five hundred feet of an area leased under this Act, the owner of the lease on such University area shall, within sixty days after the initial production on such privately owned area, begin in good faith and prosecute diligently the actual drilling of an offset well or wells on the area so leased from the State and such offset well or wells shall be drilled to such depth and

under such conditions as may be necessary to prevent the undue drainage of oil and gas beneath such University area. A log of such well, whether producer or non-producer, shall be filed in the General Land Office within thirty days after the well has been completed or abandoned.

SEC. 10. One may transfer his lease at any time or a part thereof in any size tract not less than forty acres and such transfer shall be recorded in the county or counties in which the area or part thereof is situated and the recorded transfer or certified copy of same shall be filed in the General Land Office accompanied by one dollar as filing fee and ten cents per acre for each acre in the transfer and thereby the assignee shall have his portion separated from the other part and succeed to all the rights and be subject to all the obligations and penalties of the original lessee. The ten cents per acre as a transfer fee shall be deposited into the State Treasury to the credit of the available University fund, and the lease rental and the bonus paid by a purchaser shall be deposited in the State Treasury to the credit of the University permanent fund.

SEC. 11. An owner may relinquish his lease to the State at any time by having the relinquishment recorded in the county or counties in which the area or part thereof is situated and the recorded relinquishment or certified copy of same shall be filed in the General Land Office accompanied by one dollar as filing fee, and thereby the owner of such lease shall be relieved of any further obligations to the State but such relinquishment shall not have the effect to release the owner from any obligations or liabilities theretofore accrued in favor

of the State. The area so relinquished shall be subject to lease as in the first instance.

SEC. 12. If the owner of a lease should fail or refuse to make the payment of any sum due thereon either as rental or royalty on the production within thirty days after same shall become due, or if such owner or his authorized agent should make any false return, or false report concerning production, royalty or drilling, or if such owner should fail or refuse to drill any offset well or wells in good faith as required by this Act, or if such owner or his agent should refuse the proper authority access to the records or other data pertaining to the operations under this Act, or if such owner or his authorized agent should fail or refuse to give correct information to the proper authority, or fail or refuse to furnish the log of any well as provided herein, such lease shall be subject to forfeiture by the Commissioner of the General Land Office, and when sufficiently informed of the facts which authorized a forfeiture, the Commissioner shall forfeit same, and the area shall be subject to lease again after due advertisement; provided such forfeiture may be set aside and the lease and all rights thereunder reinstated before the rights of another intervene; upon satisfactory evidence of future compliance with the provisions of this Act and the rules and regulations authorized to be adopted for the purpose of executing its provisions.

SEC. 13. Whenever it may be necessary for the owner of a lease to enter the enclosed land of another for the purpose of ingress and egress to and from the area so leased from the State, and such lessee and owner of enclosure or agent of the owner cannot agree upon the terms or place of entry, the lessee or his agent may peti-

tion the Commissioners Court of the county or counties in which such enclosure may be situated in whole or in part for the opening of such way of ingress and egress aforesaid as may be necessary. Upon the filing of such petition it shall be the duty of said court or courts to proceed to lay out and establish in the manner provided for the laying out of third class public roads, such road or roads as may be necessary for the purposes named herein.

SEC. 14. All oil and gas permits heretofore issued upon lands included herein and now in force shall be extended for a term of five years from date thereof and whenever production is secured in paying quantities and the payment of royalty begins, the owner shall not pay any further annual money rental. After production is secured in paying quantities the owner shall be entitled to a lease which shall run so long as the area covered by his lease produces oil or gas in paying quantities, subject to the provisions of this Act.

SEC. 15. The importance of this proposed legislation and the near approach of the close of this session creates an emergency and an imperative public necessity that the rule requiring bills to be read on three separate days in each House be suspended, and that this Act be placed upon its third reading and final passage and take effect from and after its final passage, and it is so enacted.

(NOTE: The enrolled bill shows that the foregoing Act passed the House, 102 yeas, 5 nays; passed the Senate, 27 yeas, 0 nays.)

Approved March 10, 1925.

Effective March 10, 1925.

APPENDIX E

Act of March 31, 1927, 40th Legislature, Page 368
Chapter 249.

WHEREAS, there are now pending in the Supreme Court of Texas two petitions for mandamus against J. T. Robison, Commissioner of the General Land Office in which Geo. W. Theisen and S. Rosa Frank as Relators are seeking to compel the said Commissioner to issue to each an oil and gas permit for the development of those substances under their applications heretofore filed on University land at ten cents per acre and one-eighth royalty under the Act of March 16, 1917, for the alleged reason the Act of March 10, 1925, providing for the sale of oil and gas leases on University land is unconstitutional, and

WHEREAS, the Regents of the University have joined in the attack upon the 1925 Act and if the effort to destroy said Act should be successful and resort have to be had to the Act of 1917 for the development of oil and gas on University land the estimated loss to the University fund amounts to a few million dollars, now, therefore

S. B. No. 474.

An Act to withdraw from sale the oil and gas in University land until such time as the Legislature may enact laws deemed adequate to protect the interest of the University in its available and permanent funds, on the condition only that the University mineral lease or sales Act of March 10, 1925, Chapter 71, Acts of Regular Session, 39th Legislature, shall be held invalid or ineffective by the Supreme Court of Texas in

suits now pending or that may hereafter be filed; and in that event prohibiting the Commissioner of the General Land Office from issuing any oil and gas permit upon any application heretofore or hereafter filed, and declaring an emergency.

Be It Enacted by the Legislature of the State of Texas:

SECTION 1. If, in cases now pending in the Supreme Court or in cases hereafter filed, the said court should decide that the mineral lease or sales Act of March 10, 1925, Chapter 71, Acts Regular Session, 39th Legislature, is invalid or ineffective, then and in that event the minerals in all University land are hereby withdrawn from lease or sale until such time as the Legislature may enact legislation deemed adequate for the protection of the University available and permanent funds; and the Commissioner of the General Land Office shall not, in the event such sales Act is declared unconstitutional, thereafter issue any oil and gas permits on said land upon any application heretofore or hereafter filed, until further legislation as to same.

SEC. 2. The manifest importance of this legislation and the crowded condition of the calendar, creates an emergency and an imperative public necessity exists that the constitutional rule requiring bills to be read on three separate days in each House be suspended and that this be placed upon its third reading and final passage and take effect from and after passage, and it is so enacted.

Approved March 31, 1927.

Effective March 31, 1927.

APPENDIX F

Act of January 11, 1929, 41st Legislature, Page 6.
Chapter 2.

S. B. No. 7.

An Act repealing Chapter 71 of the Acts of the Regular Session of the Thirty-ninth Legislature. Further providing for a withdrawal from lease or sale of all oil and gas in University lands until such time the legislature may enact laws deemed adequate for the protection of the University fund, especially withdrawing from sale or lease oil and gas in University lands advertised for sale for January 2, 1929, as well as for later times during the month of January, and further requiring the Commissioner not to consider any of the applications filed for lease or purchase of such oil and gas so advertised, and further requiring him to forthwith return the applications so filed, together with remittances made therein and declaring an emergency.

Be It Enacted by the Legislature of the State of Texas:

SECTION 1. Chapter seventy-one (71) of the Acts of the Thirty-ninth Legislature is hereby in all things repealed, and all oil and gas in University lands is hereby withdrawn from lease or sale until such time as the legislature may enact laws deemed adequate for the protection of the University funds, and it is hereby declared to be the duty of the Land Commissioner not to consider applications filed for the purchase or lease of such oil and gas, but upon the contrary it shall be his duty to return all such applications, together with remittances made to the applicants without making any record of the terms offered.

SEC. 2. Oil and gas in University lands advertised for sale for January 2, 1929, the date of sale of which was afterwards postponed to January 22, 1929, is specifically withdrawn from sale or lease, and it is hereby declared to be the duty of the Land Commissioner not to consider applications filed for the purchase or lease of such oil and gas, but upon the contrary it shall be his duty to return all such applications, together with remittances made to the applicants without making any record of the terms offered.

SEC. 3. Oil and gas in University lands advertised for sale for January 2, 1929, the sale of which was not postponed, is also specifically withdrawn from sale, or lease, and it is hereby declared to be the duty of the Land Commissioner not to consider applications filed for the purchase or lease of such oil and gas, but upon the contrary it shall be his duty to return all such applications, together with remittances made to the applicants without making any record of the terms offered.

SEC. 4. Oil and gas in University lands advertised for sale for the various days in January, 1929, beginning with January 16th, and other days subsequent thereto in January, is also specifically withdrawn from sale, and it is hereby declared to be the duty of the Land Commissioner not to consider applications filed for the purchase or lease of such oil and gas, but upon the contrary it shall be his duty to return all such applications, together with remittances made to the applicants without making any record of the terms offered.

SEC. 4-a. If any provision or Section of this Act be declared invalid or unconstitutional the same shall not

affect any other portion or provision thereof, and all other provisions shall remain valid and unaffected by any invalid provision, if any.

SEC. 5. The necessity for the immediate protection of the University funds creates an emergency and an imperative public necessity that the rule requiring bills to be read on three several days be suspended, and that this Act shall take effect and be in force from and after its passage, and it is so enacted.

(NOTE—S. B. No. 7 passed the Senate, 27 yeas, 0 nays; passed the House, 119 yeas, 0 nays.)

Approved January 11, 1929.

Effective January 11, 1929.

APPENDIX G

Act of March 29, 1929, 41st Legislature, Page 616.
Chapter 282.

S. B. No. 82.

An Act to provide for the sale of oil and gas in and on University lands; to create a Board to perform the duties with reference thereto provided hereby; to provide for surveying, dividing and marking of said lands; prescribing duties of the Board of Regents of the University of Texas and of the Commissioner of the General Land Office of the State of Texas, authorizing the employment of geologists and mineralogist, and other employees, and making an appropriation, and repealing all laws in conflict herewith, and declaring an emergency.

Be It Enacted by the Legislature of the State of Texas:

SECTION 1. A Board is hereby created to consist of the Commissioner of the General Land Office and two members of the Board of Regents of the University of Texas, neither of whom is employed either directly or indirectly by any oil or gas company, nor is an officer or attorney thereof, to be selected by said Board of Regents, who shall perform the duties hereinafter indicated; the Board shall be known as "Board for Lease of University Lands." The term "Board" wherever it appears hereafter in this Act shall mean "Board for Lease of University Lands." The Board shall keep a complete public record of all its proceedings.

SEC. 2. It is hereby made the duty of the Board to cause to be done such surveying or re-surveying of the blocks and subdivisions thereof of the University lands

as may be necessary to enable the lines of the blocks and sections and fractional sections to be determined and identified and have such corners as may be necessary to that end permanently marked. When it is impracticable to establish such lines and corners as originally surveyed, or when such sections have not been actually surveyed on the ground, the blocks shall be surveyed or re-surveyed and divided into surveys of sections and fractional sections and as many corners thereof as may be necessary for the identification shall be permanently marked. The surveyors employed to do such surveying shall be approved by said Board. The field notes of such surveys shall be returned to the General Land Office, and when correct and in accordance with law, shall be approved by the Commissioner, filed in the General Land Office and become archives therein.

SEC. 3. The oil and gas in the University land shall be subject to sale on and after June 1, 1929, under the regulations, at the times and on the terms provided herein, together with such rules and regulations as may be authorized herein to be adopted by the Board, but not inconsistent with the provisions of this Act.

SEC. 4. Whenever there shall be such demand for the purchase of the oil and gas in any one or more separate whole surveys of sections or fractional sections of University land as will reasonably insure that said oil and gas may be sold advantageously, the Board shall place said oil and gas in said lands on the market in separate whole surveys only or in subdivisions of said surveys. It shall cause to be advertised a brief description of the lands from which the oil and gas is proposed to be sold and that sealed bids for the purchase of said oil and gas by lease will be opened at a designated day,

at ten o'clock A. M. on that day, and that sealed bids received up to that time will be considered. Said advertisement shall be made:

(*a*) By insertion in two or more papers of general circulation in this State.

(*b*) By mailing a copy thereof to the County Clerk and County Judge of every county in this State.

(*c*) In addition to the two foregoing mandatory provisions, the Board may in its discretion, cause said advertisement to be placed in oil and gas journals in and out of the State and to be mailed generally to such persons as they think might be interested.

SEC. 5. All bids shall be directed to the said Board in care of the General Land Office of the State of Texas, and shall be retained by the Commissioner of the General Land Office until the day designated for the opening of bids and upon that day the said Board, or a majority of its members shall open said bids and shall list and file and register all bids and money received. A separate bid shall be made for each whole survey or subdivision thereof. No bid shall be accepted which offers a royalty of less than one-eighth of the gross production of oil and gas in the land bid upon, and this minimum royalty may be increased at the discretion of the Board, all members concurring, before the promulgation of the advertisement of the land. Every bid shall carry the obligation to pay an amount not less than ten cents per acre for delay in drilling, such amount to be fixed by the Board in advance of the advertisement, and which shall be paid every year for five years, unless in the meantime production in paying quantities is had upon the land.

SEC. 6. Every bid shall be accompanied by a payment

equal to the minimum price fixed on the land per acre for delay in drilling of the land bid for, which amount will constitute the first year rental payment for delay in drilling if the bid is accepted. The bid shall further indicate the royalty the bidder is willing to pay, which royalty shall not be less than one-eighth of the gross production. The bid shall further name such amount as the bidder may be willing to pay in addition to the royalty and the annual payment herein provided for, and shall be accompanied by cash or checks collectible in Austin to cover said amounts.

SEC. 7. If any one of the bidders shall have offered a reasonable and proper price therefor, not less than the price fixed by the Board, the lands advertised, or any whole survey or subdivision thereof, may be leased for oil and gas purposes under the terms of this Act and such regulations as the Board may prescribe, not inconsistent with the provisions of this Act. If after any bidding by sealed bids the Board should reject all bids, as it is hereby authorized to do, it may thereafter offer for sale and sell the oil and gas in said lands, in separate whole surveys only or subdivisions thereof, by open public auction to be held at a time and place designated by the Board and after adequate and proper notice, but no disposition shall be made of said oil and gas in said lands at such public auction at a price less than the price offered by the sealed bids. All bids may be rejected. In the event of no sale at public auction, any subsequent procedure for the sale of said oil and gas leases shall be in the manner above provided.

SEC. 8. If the Board shall determine that a satisfactory bid has been received for said oil and gas, it

shall make an award to the applicant, offering the highest price therefor, and a lease shall be executed by the Commissioner of the General Land Office, a duplicate copy of such lease shall be filed in the General Land Office. Whenever the royalties shall amount to as much as the yearly payment as fixed by the Board, the yearly payment may be discontinued. If before the expiration of three years oil and gas in paying quantities shall not have been produced, the lease shall terminate. The lease shall include such additional provisions and regulations as the Board may prescribe to preserve the interest of the State and safeguard the interests of the University funds, but not inconsistent with the provisions of this Act.

SEC. 9. If during the term of any lease issued under the provisions of this Act the lessee shall be engaged in actual drilling operations for the discovery of oil and gas on land covered by any such lease, no rentals shall be payable as to the tract on which such operations are being conducted so long as such operations are proceeding in good faith; and in the event oil or gas is discovered in paying quantities on any tract covered by any such lease, then the lease as to such tract shall remain in force so long as oil or gas is produced in paying quantities from such tract. In the event of the discovery of oil or gas on any tract covered by a lease issued hereunder or on any land adjoining same, the lessee shall conduct such operations as may be necessary to prevent drainage from the tract covered by such lease and to properly develop the same. Failure to comply with the obligations provided by this section shall subject the holder of the lease to the penalties provided in Section 12 and 13 of this Act.

SEC. 10. Title to all rights purchased may be held by the owners so long as the area produces oil and gas in paying quantities. All rights purchased may be assigned in quantities of not less than forty acres; unless there be less than forty acres remaining in any survey, in which case such lesser area may be so assigned. All assignments shall be filed in the General Land Office within one hundred days after the date of the first acknowledgment thereof, accompanied by ten cents per acre for each acre assigned, and if not so filed and payment made, the assignment shall be ineffective. All rights to any whole survey and to any assigned portion thereof may be relinquished to the State at any time by having an instrument of relinquishment recorded in the county or counties, in which the area may be situated and filed in the Land Office accompanied with one dollar for each area assigned, but such assignment shall not relieve the owner of any past due obligations theretofore accrued thereon. The Board shall authorize the laying of pipe lines, telephone lines and the opening of such roads over the University lands as may be deemed reasonably necessary for and incident to the purposes of this Act.

SEC. 11. Royalty as stipulated in the sale shall be paid to the General Land Office at Austin, Texas, for the benefit of the University Permanent Fund on or before the 20th day of each succeeding month for the preceding month during the life of the rights purchased and it shall be accompanied by the sworn statement of the owner, manager or other authorized agent showing the gross amount of oil produced and saved since the last report and the amount of gas produced and sold off the premises and the market value of the oil and

gas, together with a copy of all daily gauges of tanks, gas meter readings, pipe line receipts, gas line receipts, and other checks and memoranda of the amounts produced and put into pipe lines, tanks or pools and gas lines or gas storage. The books and accounts, receipt and discharges of all wells, tanks, pools, meters, pipe lines and all contracts and other records pertaining to the production, transportation, sale and marketing of the oil and gas shall at all times be subject to inspection and examination by the Commissioner of the General Land Office, the Attorney General, the Governor, or any member of the Board of Regents of the University of Texas, or the representative of either.

SEC. 12. In every case where the area in which the oil and gas sold shall be contiguous or adjacent to land not University land, the acceptance of the bid and the sale made thereby shall constitute an obligation on the owner thereof to adequately protect the land leased from drainage from adjacent lands. In cases where the area in which the oil and gas is sold is contiguous to other University lands leased or sold, at a lesser royalty, the owner shall likewise protect the State from drainage from the land so leased or sold for a lesser royalty. Upon failure to protect the land from drainage as herein provided the sale and all rights thereunder may be forfeited by the Board in the manner elsewhere provided herein for forfeitures.

SEC. 13. If the owner of the rights acquired under this Act shall fail or refuse to make the payment of any sum due thereon, either as rental or royalty on the production within thirty days after same shall become due, or if such owner or his authorized agent should make any false return or false report concerning pro-

duction, royalty or drilling, or if such owner shall fail or refuse to drill any offset well or wells in good faith, as required by his lease, or if such owner or his agent should refuse the proper authority to access to the records and other data pertaining to the operations under this Act, or if such owner, or his authorized agent, should fail or refuse to give correct information to the proper authorities, or fail or refuse to furnish the log of any well within thirty days after production is found in paying quantities, or if any of the material terms of the lease should be violated, such lease shall be subject to forfeiture by the Board by an order entered upon the minutes of the Board reciting the facts constituting the default, and declaring the forfeiture. The Board may, if it so determines, have suit instituted for forfeiture through the Attorney General of the State. Upon proper showing by the forfeiting owner, within thirty days after the declaration of forfeiture, the lease may, at the discretion of the Board and upon such terms as it may prescribe, be reinstated. In case of violation by the owner of the lease contract, the remedy of the State by forfeiture shall not be the exclusive remedy, but suit for damages or specific performance, or both, may be instituted. The State shall have a first lien upon all oil and gas produced upon the leased area and upon all rigs, tanks, pipe line, telephone lines and machinery and appliances used in the production and handling of oil and gas produced thereon, to secure any amount due from the owner of said lease.

SEC. 14. All surveys, files, records, copies of sale and lease contracts, and all other records pertaining to the sales and leases hereby authorized shall be filed in the General Land Office and constitute archives thereof.

Payment hereunder shall be made to the Commissioner of the General Land Office at Austin, Texas, who shall transmit to the State Treasurer all royalty for deposit to the credit of the Permanent University Fund and all rentals for delay in drilling and all other payments, including all filing assignments and reinquishment fees hereunder to the credit of the Available University Fund.

SEC. 15. The Board is authorized to employ a geologist and a mineralogist who shall keep informed with reference to the minerals in University lands and all activities under this and previous leases and sales and shall report to the Board all information gained with reference thereto. The Board is also authorized to employ other necessary employees. The salaries of such employees shall be paid monthly, and no salary shall be paid in excess of six thousand ($6,000) dollars per annum.

SEC. 16. The expenses of executing the provisions of this Act shall be paid monthly by warrants drawn by the Comptroller on the State Treasurer, and for that purpose the sum of twenty thousand ($20,000) dollars or as much thereof as may be necessary is hereby appropriated out of any money in the Treasury not otherwise appropriated until September 1, 1929.

SEC. 17. If any provision hereof should be held unconstitutional, the balance of the Act shall not be affected thereby.

SEC. 18. The Board shall adopt proper forms and regulations rules and contract as will in its best judgment protect the income from lands leased hereunder. A majority of the Board shall have power to act in all cases, except where otherwise herein pro-

vided. The Board may reject any and all bids, and shall have the further right to withdraw any lands advertised for lease prior to receiving and opening bids. Any and all or parts of laws in conflict with this Act are hereby repealed.

SEC. 19. Since there is no law authorizing the sale of oil and gas leases on University lands this fact creates an emergency and an imperative public necessity exists that the constitutional rule requiring bills to be read on three separate days in each House be suspended and that this be placed upon third reading and final passage and take effect from and after passage, and it is so enacted.

(NOTE—S. B. No. 82 passed the Senate, 25 ayes, 0 nays; Senate adopted free conference report, 28 ayes, 0 nays; passed House with amendments, 104 ayes, 23 nays; House adopted free conference report, 103 ayes, 5 nays.)

Approved March 29, 1929.

Effective March 29, 1929.

APPENDIX H

House Bill No. 812 of 1913.

A Bill
To Be Entitled

An Act to Amend Article 7504, *Revised Civil Statutes of* 1911, *by making clear the purpose and intent of the law to tax certain character of lease-hold interests in land, authorizing the lessee, grantee or licensee to mine and to prospect for and take from lands stone, granite, fossils, minerals, including oil and gas; and declaring an emergency.*

Be It Enacted By the Legislature of the State of Texas:

SECTION 1. That Article 7504, Revised Civil Statutes of the State of Texas, be amended so as to hereafter read as follows:

ART. 7504. Real property for the purpose of taxation shall be construed to include the land itself, whether laid out in town lots or otherwise, and all the buildings, structures and improvements, and other fixtures of whatsoever kind thereon, and all the rights and privileges belonging or in any wise appertaining thereto, and all mines, minerals, quarries and fossils in and under the same, also all lease-hold interests whereby the lessee, grantee or licensee is authorized to mine and prospect for and take from lands, stone, granite, marble, fossils, minerals of any kind, including oil and gas.

SEC. 2. The fact that the right of the State to tax leasehold interests in lands under which the lessee, grantee or licensee is permitted to prospect for and mine or take from said lands minerals, including oil and gas, is being disputed by the owners of said lease-hold interests, and the State is being forced to have litigation with such persons, there-

fore the necessity to render the law of this State upon said subject beyond cavil or the possibility of a doubt, creates an emergency and an imperative public necessity requiring that the constitutional rule requiring bills to be read on three several days in both Houses be suspended, and it is accordingly so done, and that this Act be in force and take effect from and after its passage, and it is so enacted.

Floor Report.

Committee Room, Austin, Texas.

March 19, 1913.

Hon. Chester H. Terrell, Speaker of the House of Representatives:

Sir: Your Committee on Revenue and Taxation, to whom was referred House Bill No. 812, a bill to be entitled

An Act to Amend Article 7504, *Revised Civil Statutes of* 1911, *by making clear the purpose and intent of the law to tax certain character of lease-hold interests in land, authorizing the lessee, grantee or licensee to mine and to prospect for and take from lands stone, granite, fossils, minerals, including oil and gas; and declaring an emergency,*

Have had the same under consideration, and I am instructed to report it back to the House with the recommendation that it do pass.

MANGUM, *Chairman*,
KIRBY,
SPRADLEY,
BURGES,
(For the purpose of getting before the House only).

ROACH,
LANE,
DOVE,
KENNEDY,
PATTON,
DAVIS,
KING,
POWELL,
DIFFIE.

House Bill 812.

By KENNEDY

A Bill
To Be Entitled

An Act to Amend Article 7504, Revised Civil Statutes of 1911, by making clear the purpose and intent of the law to tax certain character of lease-hold interests in land authorizing the lessee, grantee or licensee to mine and to prospect for and take from lands stone, granite, fossils, minerals, including oil and gas; and declaring an emergency.

March 8, 1913, Read first time and referred to Committee on Revenue and Taxation.

TERREL.

Favorable Floor Report
3-19-13

ROACH.

THE STATE OF TEXAS
DEPARTMENT OF STATE

I, Jane Y. McCallum, Secretary of State, of the State of Texas, do hereby certify that the foregoing is a true and correct copy of

HOUSE BILL No. 812

introduced at the 33rd Legislature; and the report attached thereto with the endorsement thereon, as now appears of record in this Department.

In Testimony Whereof, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in the City of Austin, this 10th day of April, A. D. 1930.

(SEAL) JANE Y. MCCALLUM,
Secretary of State.